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OF THE

PROTESTS OF THE LORDS

WITH HISTORICAL INTRODUCTIONS

*EDITED FROM THE JOURNALS OF THE LORDS*

BY

JAMES E. THOROLD ROGERS

VOL. I. 1624—1741

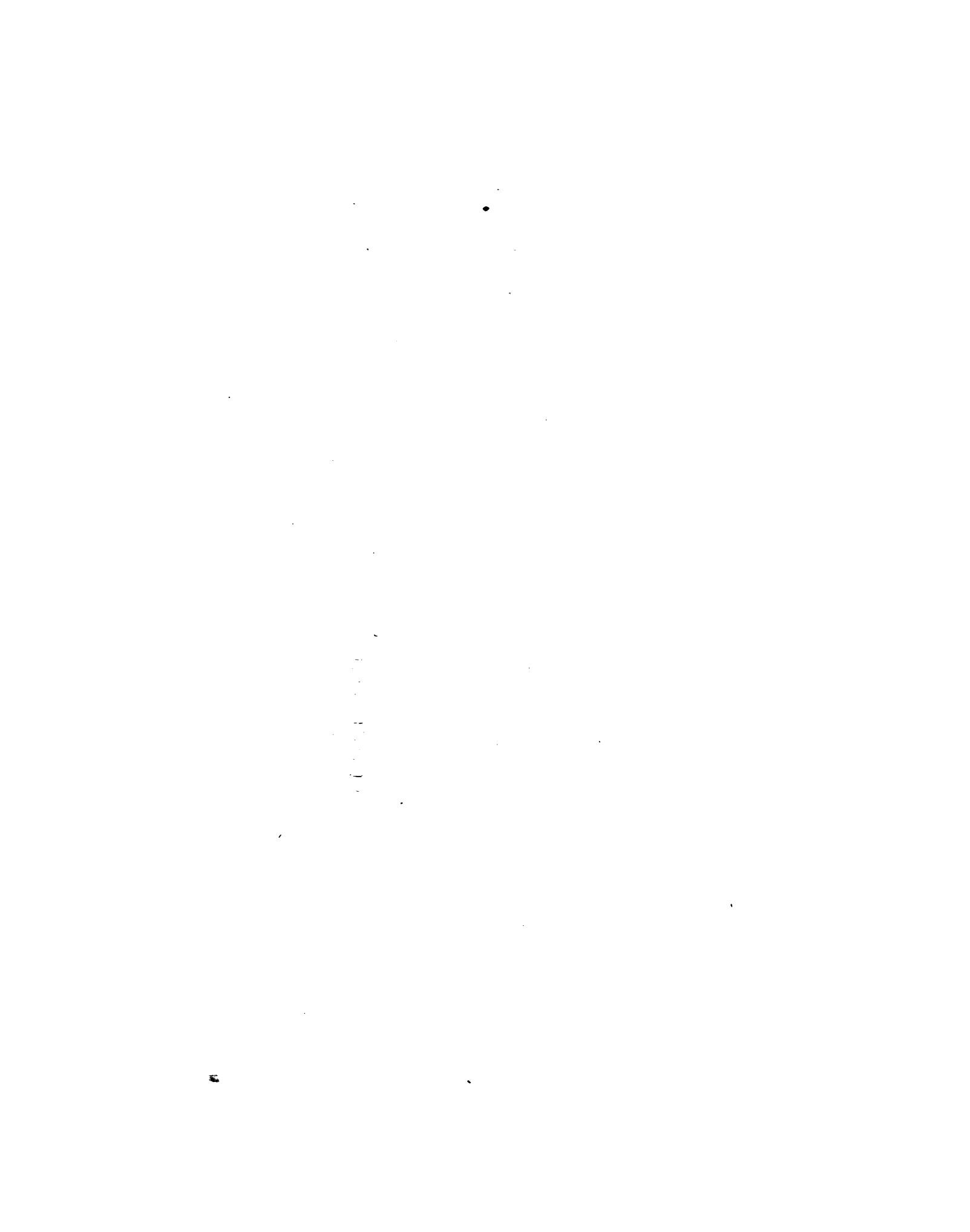
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## PREFACE.

THE Journals of the Lords begin with the reign of Henry VIII (1509). The list of the Lords heads the entry for the day, and from 1514 the attendances are registered. The prominence given to the names of Lords is due to the fact that attendance on the business of the House was compulsory, fines being leviable on absentees without leave, and proxies being required from those who could not attend. The registration of these proxies was one of the earliest pieces of business in each Parliament, and it was the custom for absent Lords to name several proxies, evidently in order to save the risks of non-attendance. The standing order which afterwards regulated the nomination of proxies was entered on the Journals on the 25th of February, 1626. The Journals between 1515 and 1533 are lost.

In the early Journals the entries of business transacted are very few, and very short. Sometimes the record merely notes that the sitting was held and adjourned. The heads of Bills are given briefly, and for a long time there is no indication of the practice, which is customary from the end of the sixteenth century, of referring Bills to a Committee. At first there are no statements as to difference of opinion in the House, the entry *nemine discrepante* occurring in the extant Journals for the first time on the 28th of May, 1540.

The first occasion on which dissentients to a measure are named is on the 14th of March, 1542, when the Duke of Suffolk and

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Lord Dacres dissented from a Bill empowering Butchers, &c., to sell 'at their Liberty,' by weight or otherwise. A year afterwards (April 19, 1543) four Lords dissent from a Bill disabling feigned recoveries by tenants in tail where the King is in reversion. Three similar entries occur in the residue of Henry VIII's reign, one of these occasions being a Bill against usury. There is nothing in these entries which implies that the statement of dissent was registered by the wish of the opposing Peer.

During the six years and a half of Edward's reign these dissents are entered numerously, thirty-seven being recorded, the principal being notes of the opposition to the progress of the Reformation. Generally the Bishops are the remonstrants against these changes. Thus the dissentients from the appointment of the Commission of the 31st of January, 1550, under which thirty-two persons were nominated to peruse and make ecclesiastical laws, were ten prelates. On the other hand, the dissentients to the Bill of 1552, by which the marriage of priests was permitted, were all laymen : the Earls of Salop, Derby, Rutland, and Bath ; Lords Abergavenny, Stourton, Monteagle, Sondes, Windsor, and Wharton. It is significant that the only opponents of Northumberland's<sup>1</sup> scheme for depriving the Bishop of Durham and confiscating his see were the Archbishop of Canterbury (Cranmer) and Lord Stourton (31st of March, 1551). In none of these dissents, again, does the entry appear to have been made in accordance with the wish of the dissentients.

There are twenty-two records of dissent during the reign of Mary. They are, with one exception, all against secular measures. But Bonner, the Bishop of London (26th of December, 1554), dissents from the Bill which repeals all statutes made against the

<sup>1</sup> There is no doubt that the reaction in favour of the old religion and of Mary's title in 1553 was materially assisted by the rapacity of Edward's courtiers, and particularly by that of Dudley. The towns had lost all their guild lands by 1 Edward VI. cap. 14 (on the plea that these funds were devoted to superstitious uses), and with these funds the means of supporting their poor. Hence the temporary poor law of Edward VI (5 and 6 Edward VI. cap. 2). Norfolk and Suffolk, where the reaction began, were by far the richest English counties at that time, being the seat of nearly all the English manufactures. It is significant that they were also most strongly attached to the Reformation.

see of Rome since 20 Henry VIII. In this reign occurs the first notice of a division. On the same day (May 5, 1554) one Bill is passed *majore procerum numero consentiente*, another rejected *majore procerum numero dissentiente*.

During the first two years of Elizabeth's reign the Journals contain several entries of dissent with the names of the dissentients. Generally the dissent is from the ecclesiastical policy of Elizabeth, the Marian Bishops being the remonstrants. These Bishops disappear within the two years following on the Queen's accession. It is singular that in 1562 the Earl of Arundel dissented from a Bill for the punishment of Egyptians; Viscount Montague and Lord Dacres from another against fond and fantastical prophecies. In 1566 (November 6) the Bill declaring that the consecration of the Anglican Archbishops and Bishops is good, lawful, and perfect, is dissented from by the Earls of Northumberland, Westmorland, Worcester, and Sussex, Viscount Montague, Lords Morley, Dudley, Darcie, Monteagle, Cromwell, and Mordaunt. Only two other entries of dissents occur in the residue of Elizabeth's reign, one against a private Act, and the other against a declaratory Act. In 1580 it is stated that the number of votes for and against a Forgery Bill were equal, and it was ordered 'that the Bill be laid up in the Desk till next Parliament.' In 1601, when the same incident occurs, the House rules of such an equality, *semper præsumitur pro negativo*.

There is no entry of any dissentient's name during the reign of James the First. On one occasion (June 25, 1604) a statement is made that Viscount Montague defended Popery, and dissented from the Recusants Bill. But this is a mere preface to the punishment which the House inflicted on this Peer, very inconsistently with their practice before and afterwards, for this House has very rarely punished its members for freedom of speech.

There are no entries of dissentients in the first four Parliaments of Charles I. Once indeed Viscount Purbeck 'protested' that he had no intention of protecting his wife—a daughter of Chief Justice Coke—and in the same year (1628) his brother the Duke of Buckingham 'protested' that he did not say at his own table

'Tush! it makes no matter what the Commons or Parliament doth, for without my leave and authority they shall not be able to touch the hair of a dog.' The Duke averred 'that he never had these words so much as in his thoughts,' and the House simply ordered the statement to be entered on its Journals. Similarly the documents printed in the following pages as Nos. I and II were adopted by the House, the former at once, the latter on the 18th of March, 1641.

It appears that the practice of entering the names of dissentients to a Bill or other measure was dropped when the Lords began to refer measures to a Committee of their own number. The House, it is probable, seldom differed from the report of a Committee, for it is found more than once, when the Committee report that they disagree on the merits of a measure, that the subject is remitted anew to the House. It is plain, however, that they were influenced by a more powerful motive, the desire of keeping their proceedings secret.

The only condition under which grievances can be remedied, malpractices chastised, and advice tendered in Parliament, is the concession of freedom in speech and debate. Such a freedom was accorded to the two Houses from the earliest times, and is indeed the original privilege of Parliament, of which all other privileges are developments. A tongue-tied Parliament is a contradiction in terms, and there is no need to wonder, as some have wondered, at the very early exhibition of plain-speaking in both Houses, particularly in the Lower. In the Upper House, as we learn from the history of the Plantagenet Kings, the nobles freely used their privilege, and carried into action what they arrived at by debate. The progress of the constitution in Parliament was rapid, and history would probably have been anticipated by two centuries, without a convulsion and a reaction, had not the Crown and the Nobles contrived to depress the Commons during the long war of the French succession. It is unreasonable to imagine that the famous statute of 1430, rendered still more stringent by that of 1432, by which the franchise was first limited to a forty-shilling freehold, and this freehold was to be in the same county, was a

spontaneous petition of the Commons. A forty-shilling freehold in those days, interpreted by the rents paid for arable land, was equivalent to an estate of eighty acres of good arable land at least, with of course the rights of common which were then so extensive and valuable. This statute silenced the tenant farmer and many of the yeomanry, and threw the Parliamentary franchise of the counties into the hands of the large proprietors, or at least exposed it to their overwhelming influence.

The motives which led to this successful reaction are plain. The English peasantry had in a century risen from the condition of very small occupiers, free and serf, through a land and stock system of leasing to that of a numerous yeomanry. The serfs had been virtually emancipated by the terror of Wat Tyler's rising, and the Upland folk were thoroughly permeated by that part at least of Wyclif's teaching, which menaced the power and opulence of the prelates and the religious houses. The Commons of Henry IV's reign exhibit a boldness and independence which was not repeated for more than two centuries. But the House of Lancaster had allied itself with the ecclesiastical interest, and the Lower House was weakened, till another race of freeholders had been planted on the ruins of the medieval Church, till the alteration in the value of money had again reduced the franchise, and the struggle of the Puritan movement commenced.

There is no contrast more violent than that of the English Lords of Parliament in the middle of the fifteenth with the same body a century later. In the former period they were the counsellors of the Crown, and till they were drawn into the factions of the civil war, seriously strove to adjudicate on the highest affairs of State. In the latter they are little better than a Court, which registers the decrees of a despot, and gives them the advantage of constitutional forms. The judicial functions of the Peers were perverted into the means by which the King easily sacrificed, under the fictions of a legal trial, the leaders of either party, of the old and of the new peerage alternately. The most conclusive condemnation of Henry's policy (which has been attacked and defended as the one conspicuous exemplar of personal government

in the annals of England) is to be found in the history of his son's reign, in the conduct of the men who managed public affairs, in the total collapse of the system, in the hypocrisy and rapacity of those who disgusted England with the Reformation, and in the political degradation of the nation.

The discipline of despotism had made both Houses cautious. It is true that hardly any opposition was shown to the Court in the Upper House till the autumn of 1640, when the memorial of the twelve Peers was drawn up and presented. The chief brunt of the earlier struggle, from the remonstrances of the Wentworths in the days of Elizabeth, to the imprisonment of Eliot at the conclusion of Charles' third Parliament, was borne by the Commons. From this custom or tradition the privilege of the Commons in money Bills was consolidated. But the attitude of the Lords was natural and ultimately useful. A body of men, whose rank kept them in the King's presence and under his influence, especially as they were recruited so freely from such as might make themselves acceptable to the monarch during the reign of James, would generally be found on the side of the Court. They did a high public service in 1640, when they endeavoured to mediate between the King and his people, till reconciliation became impracticable. Meanwhile it was expedient to make the record of their proceedings as colourless as possible; for the Journal, at some time or another, became a public document.

I have observed that all Parliamentary privilege flows from one central right, that of free speech in Parliament. But it became the custom to look on this with jealousy. Henry IV, the most conciliatory of the earlier English Kings in dealing with his Parliaments, resented the plainness with which his Commons addressed him. Every one knows how Charles I interpreted the privilege. It owes its first legal recognition to the most despotic of English monarchs, Henry VIII.

Strode's Act is 4 Henry VIII, cap. 8. It relieved Strode and others from certain penalties which they had incurred in the Stannary courts, and from any responsibility for what they had said in Parliament. By a laxity of language, which must have

conveyed far more than the framers of the Act contemplated, the immunity is made to extend to all speech in future Parliaments. By a vote of the 12th of November 1667 in the Commons, and of the 11th of December 1667 in the Lords, Strode's Act was declared to be a general Act, and was treated as a Charter of Free Speech.

It has been easy and customary to say that the privileges of Parliament were usurpations. But in the struggle of rival political forces, till such time as the limits of each force are defined, these usurpations are necessary and inevitable. The right of every Peer to a Writ of summons, cannot, I presume, be historically substantiated, especially in the cases of peerages by writ. It would have been dangerous to have insisted on it in the days of the Tudors, and would certainly have been premature. It was supremely necessary to claim the right in the time of Charles I, as is illustrated by the cases of the Earls of Arundel and Bristol. Attendance on Parliament was an obligation exacted from those who often grudged their labours and their responsibilities. As late as 1610 (19th of April) the King treats absence as a contempt. From the earliest times, the parties summoned were bound to appear, either personally or by proxy, under pain of a heavy fine.

Freedom from civil process, freedom from arrest, in their own persons and in those of their servants, and protection from menace or insult were inseparably connected with the privilege of free speech. So again was the secrecy with which Parliamentary debate was conducted. This secrecy was at once a safeguard and an apology, the former in that any communication of what had been said in the House must have been made for sinister ends, and should be resented; the latter because no one could justly blame that which it was intended should never be published.

In course of time the necessary developments of privilege became mischievous. The Commons had experience of the inconvenience which ensued from the frequent elevation of decaying villages into Parliamentary boroughs, but they refused to listen, when the time was ripe, to arguments in favour of Parliamentary reform. The Lords claimed, irrespective of their social rank, and their privilege

as Peers accorded to them as early as the reign of Edward III, the inalienable function of hereditary counsellors and legislators, and once even passed a scheme for constituting themselves an inelastic oligarchy. They decided, in Viscount Purbeck's case, that a Peer could not relinquish his dignity ; a resolution which has no foundation in fact or reason. They decided that a summons by writ conveyed an heritable right to a seat, though the precedents against the inference were overwhelming. And these claims were the more invidious, because however much the Lords may have maintained, as they constantly did, that they were natural, invariable, and incorruptible advocates of public liberty and private right, and however much it may be possible to plead for the reality or probability of this high function, the privileges of a narrow body might always be challenged as asserted against the public, while those of the Lower House might be affirmed to be in the interest of the public.

The secrecy with which Parliamentary proceedings were recorded, the suppression of all reports of debate, the meagreness and colourlessness of the record, were characteristic in the Journals of both Houses, long after the plea for secrecy had ceased. The Journals of the Commons were always indeed much fuller than those of the Lords, though the records of the Upper House are swollen with the reports of judicial proceedings. The secrecy too was preserved longer by the Lords than by the Commons. Notices of motion are entered without the name of the mover, no hint is given as to the numbers by which measures were carried, retarded, or rejected, and even to the last twenty years, no division lists are published.

The student of Parliamentary forms and terms must therefore be on his guard against being deceived by the common assertion, that a privilege is undoubted, inalienable, and of indefinite antiquity. They who assumed a right, or usurped a privilege which it was convenient to endorse or concede, never scrupled to claim an immemorial right to novel developments. The jurisdiction of the Lords, original or appellate, from the Judges of the Common Law or from those of Equity, was affirmed to be ancient and incontest-

able, when it was merely new. So the sole power of the Commons of originating supplies, and the further assumption, that money bills must not be altered, though fortified by the claim of overwhelming prescription, and justified by considerations too numerous to be set down here, were usurpations which have an historical beginning. There is no case in which this assertion is more boldly made than in the practice of protesting with reasons, a practice peculiar to the Upper House, and asserted, by those who wished from time to time to put it into execution, to be an undoubted, inherent, and ancient privilege. It was not assumed or acted on before the Long Parliament, though the six Peers who make the first protest, with or without reasons, state that they 'demanded their right of protestation<sup>1</sup>.'

The following facts seem to supply the negative evidence as to the origin of protests with reasons. On the 25th of November, 1669, eight Peers protest against the Lords entertaining a suit in Chancery (No. xxxiv). On the 8th of December the Lords ordered that the Committee of Privileges should examine 'what had been the ancient custom of the House concerning entering of reasons upon Protestations and Dissents to matters debated in Parliament, and should make report to this House.' On the 11th of December Parliament was prorogued. It met again on the 4th of February, 1670, but no report is made by the Committee of Privileges. On the 13th of April, 1675, another protest (No. xxxviii), signed by ten Peers (among whom are Shaftesbury and Clarendon), is entered, dissenting from the rejection of a motion for thanking the King 'for the gracious expressions in his speech,' and from the substitution of the words, 'his gracious speech.' On the 15th of April notice is taken of this protest, and a debate on its language is ordered to be taken on the 21st of April in a Committee of the whole House. On the 29th of April the House took offence at certain expressions employed in another protest (No. xl), entered on the 26th of April, and resolved that they reflected on the honour of

<sup>1</sup> It is worth noting that the names of Peers present are not given in the Journals during the earlier years of the Long Parliament. The same significant omission characterises the Irish Parliament, and for the same period.

the House, a vote which was followed by another protest, signed by twenty-one Peers (No. xli), in which the right of protestation is emphatically affirmed. It is probable that further action would have been taken on this occasion, had not the Peers been fully occupied with the case of Fagg and Sherley, and their quarrel with the Commons. Parliament was prorogued on the 9th of June, ostensibly because this quarrel was a total hindrance to public business.

Parliament met again on the 3rd of October, and, as is well known, the Houses recommenced their quarrel over the case of Sherley and Fagg. On the 4th of November Lord Anglesey inserted a protest denying the right of the Lords to entertain the case at all, on the ground, among others, that the Lords have no original jurisdiction (No. xlvi). This action of Lord Anglesey revived the question originally raised six years before, and 'the manner of protestation' was debated at length on the 11th of November. The debate was adjourned to the 15th of November, and then again adjourned to the 18th, the Clerk of Parliaments being ordered 'to have the Journals in readiness, and the Clerk of Records in the Tower to attend with such rolls as bear on the matter for the examining of precedents mentioned in the said debate, or such others as shall then be offered to this House.' On the 18th of November the debate was adjourned to the 22nd, when Parliament was prorogued. The question was then dropped and was never revived.

I have been unable to discover any report of this debate, or any notes taken of the arguments alleged on either side. The fact of the debate is mentioned in the celebrated 'Letter from a person of quality to a friend in the country,' which publication is variously assigned to Shaftesbury and Locke. This authority informs us that the defence of the practice was undertaken by Lord Holles; and we learn from the same source that the practice of protesting was checked by referring Bills—in this particular case the Oaths Bill—to a Committee of the whole House, because the liberty of protesting against the votes of such a Committee was not allowed.

I have dwelt on these facts at length, because they suggest that the majority looked with considerable jealousy on the

right assumed by the minority, and were disposed to adopt some expedient by which the exercise of the right might be brought under restraint. The expedient was discovered in the practice of expunging reasons, the vote of the House by which all the proceedings in Strafford's trial were obliterated from the Journals being the precedent for such obliterations. But I feel convinced that if the House had discovered from their records that the right which they claimed was really as ancient and undoubted as they had begun to assert it to be, they would have called attention to a course of ancient and cumulative precedents in defence of the privilege. Now such evidence was not forthcoming; the practice was a generation old, and no more, and had been adopted in the first instance by that section of the Long Parliament which acted in unison with those members of the Commons who took Pym as their Parliamentary leader. It might have been inconvenient to avow the origin of the practice; it would have been the abandonment of a privilege to have retreated from the practice; and it is impossible to doubt that both parties, or all parties, recognised that there was an advantage in maintaining a practice from which the Commons had expressly precluded themselves after the debate on the Grand Remonstrance, and which formed thereupon a special distinction of the peerage. I may here observe that the first protest with reasons entered in the Journals of the Irish House of Lords was in 1695, and that the practice was plainly borrowed from English procedure. But the Lord Lieutenant, or Lord Deputy, of Ireland claimed and exercised the right of entering his protest against the proceedings of the Irish Lords on the Journal of their House, a practice which was commenced by Wentworth, though it was not admitted without challenge.

The plea given in many of the older protests, that the parties subscribing wish to clear themselves from the consequences which they foresee as likely to ensue from the action of the majority, seems to imply that the Lords conceived themselves, in their capacity of hereditary counsellors of the Crown, liable to the consequences of having given ill advice, or of having assented to an injudicious act of legislation. The responsibility of ministerial

acts on the part of the King's advisers had lately been affirmed by a terrible example, the temper of the Commons was suspicious and irritable, and it is by no means improbable that a certain section of the Peers was ready to adopt a proceeding which should put them in the most favourable light. The King had given his assent to the Triennial Bill on the 11th of February, 1641, and on the 10th of May had assented to another measure, making the Long Parliament perpetual. By this Act the Commons were put on an equality with the Lords, as regards the permanence of the existing Chamber, and were enabled, by freely using the power of expulsion, to systematically depress the opponents of their measures, while they possessed other privileges, some generally conceded, others almost daily assumed, of a most formidable and inclusive character.

To confirm this interpretation of the motives which influenced the Peers in adopting the practice of protesting with reasons, it may be observed, that all the protests with reasons which are entered on the Journals by the Peers during the existence of the Long Parliament, with one exception (viii), advocate the views entertained by the extreme party in the Lower House.

After a debate, which lasted from nine in the morning of the 22nd of November, till two in the morning of the 23rd of November, 1641, the Grand Remonstrance was carried by 159 votes to 148 in the House of Commons. On this the minority, led by Hyde, desired leave to protest. On the 24th and 25th of November the question as to whether protestation should be allowed was warmly debated. The suggestion was opposed by Pym and others. Their arguments, chiefly derived from the fact that the practice was unknown in the Commons, were supported by significant threats directed against those who presumed to claim the right. On the other hand, Hyde informs us that, while he admitted that he did not know the ancient customs of the House of Commons, though 'he well knew it was a very ancient custom in the House of Peers,' he said, 'he did not understand why a Commoner should not have the same liberty if he desired not to be involved in any vote, which he thought might possibly be inconvenient to him; that he only desired leave to protest against

printing the Remonstrance, which he thought was not in many respects lawful for them to do, and might prove pernicious to the public peace.' Permission was of course refused, and Palmer, one of the would be protesters was sent to the Tower, though he was subsequently restored to his place in the House. The antiquity of the custom in the Lords does not, on an inspection of the Journals, seem to rest on any other proof than the insertion of dissentients' names in the record during a part of the Tudor period.

The motive of this attempt of Palmer and Hyde has not, I think, been hitherto explained, but seems to me easily discoverable from certain intelligible facts, some of which have been collected out of D'Ewes' manuscript Journal by Mr. Forster. The Parliament which met on the 3rd of November 1640 was determined to exact guarantees against personal government from Charles, the Peers being as resolute as the Commons, though it was natural that the hereditary branch of the legislature should be content with less than the Commons proposed or attempted. Experience proved that the King was equally determined on maintaining all he could by every expedient which he could adopt, and that he entertained very vindictive memories against all who were disposed to thwart or restrain him, and this probably because he believed that any invasion or limitation of his prerogative was treason and impiety. It was, I am persuaded, for this reason that the Lords adopted the temporary and singular expedient of omitting the register of attendance from their Journals. It was for the same reason that the Commons adhered so tenaciously to their privilege of secrecy; that, when the designs of the King's party became manifest, they punished all customary breaches of privilege with such severity, and that they invented new offences against Parliamentary liberty or right.

It is well known that a reaction set in after the death of Strafford, and the imprisonment or exile of the King's former counsellors. It appears certain that many of those who had urged the attainder of Strafford took advantage of this feeling, that they went over to the King's party, with the view of becoming his

ministers, that they intrigued against the policy of Pym and Hampden (while they attempted to negotiate with them for the acceptance of office) both in England and in Scotland, and that, being suspected or discovered, they were the occasion and the opponents of the Grand Remonstrance, which was originally devised by Lord Digby, but who subsequently became one of Hyde's followers. These facts have been illustrated in detail by Mr. Forster.

On the 9th of September, 1641, six Peers, belonging to the Parliamentary party, protest, for the first time, with reasons. Lord Clarendon, writing many years after the event, says, that he stated in the debate of the 23rd of November, 1641, that the custom was very ancient with the Peers. We know, however, from the Journals that this statement must have been incorrect, and we know enough of Lord Clarendon's accuracy, in every particular which affected his own conduct and character, to entertain a very reasonable suspicion that he never said anything of the kind, as he might have been immediately refuted. That he tried to claim the right of protest is certain, that he gave reasons more or less specious for his plea is highly probable, but he was far too prudent a person to allege that to be an ancient privilege which could have been easily proved to be a novelty.

The entry of the protest of the 9th of September was an act of considerable courage. The Houses rose on that day for a short recess, that is, till the 20th of October, the King having left Scotland exactly a month before, in order, it has been proved, to get such information as would enable him to put the charge of treasonable correspondence with the Scotch insurgents on Pym and Hampden. At such a crisis the entry of names with reasons why the dissentient Peers objected to take any action whatever, except concurrently with the Commons, on a matter of ecclesiastical policy, was a challenge to Charles, and was certain to expose the dissentients to the King's anger, in even a greater degree than it would the leaders of the Commons. On this occasion the six Peers had the spirit to repudiate the secrecy with which their own House had protected its proceedings, as far as their own safety was concerned, and they did so repeatedly afterwards. I am not sur-

prised that the King's party in the Upper House allowed what might have been well considered a rash act.

Had Hyde succeeded in inducing the Commons to accord a similar privilege in the Lower House, exactly the opposite result would have ensued. The entry of dissentient names would have given the King information as to the strength of his party, by the evidence of an authoritative document, and would have exposed the authors and supporters of the Remonstrance to his wrath. It is true that tolerably accurate information as to the leaders of the Parliamentary party was communicated to the King, that he had matured his plan for seizing Kimbolton and the five members at the very time that the Remonstrance was presented to him, and that his plan failed only because his design was discovered or betrayed. But no report brought him by his friends would have been so important as testimony to persons derived from the Journals themselves, even though that testimony was negative.

It seems to me, then, that Hyde's proposition was part of the intrigue by which he purposed to arrest or defeat the policy of the great Parliamentary leaders. How much store these men set by the Remonstrance is well known. How important a document the King's friends understood it to be, is plain from the language of Sir Edward Dering<sup>1</sup>, as quoted by Mr. Forster. The Remonstrance was carried by eleven votes only, and after a debate of unexampled length. Fear might easily have reversed the majority, and have baffled the King's unsparing critics. Thus they would have been within the danger of the monarch's displeasure, backed by a Parliamentary majority; in fact, would have been lost. This contingency accounts, I suppose, for the tumult of passion which was excited by Hyde's reasonings and Palmer's demand, and which threatened a commencement of civil war within the walls of the House. But I do not believe that the insidious proposal was backed by a misstatement, which could have instantly been rebutted in a House, many of the members of which were deeply read in precedents. An additional reason why the statement of Clarendon should be discredited is the fact that no mention of the speech of

<sup>1</sup> *The Grand Remonstrance*, p. 215.

Hyde is made either by D'Ewes or Verney, the former a man who had a keen relish for precedents, and very attentive ears to any debate on matters of Parliamentary procedure, and the latter a very diligent listener during this significant crisis. Hyde may have said, 'The Lords have allowed the minority to protest, why should the Commons refuse the same privilege to us.'

The usurpation or innovation of 1641 has, however, supplied a series of invaluable documents, contemporaneous with the events on which they comment, and illustrative beyond any other records whatever of the history of modern public opinion. The protest, in fact, is generally a carefully condensed summary of the arguments with which the opposition vainly strove to carry their point<sup>1</sup>. It was intended for publication<sup>2</sup>, and at a time when original and authoritative expositions of political opinion were very rare; and when the publication of any debate was a serious breach of privilege, the protest was eagerly read, and highly valued. Sometimes an attempt was made to check the publication of these protests, the last of these repressive motions having been carried on the 7th of February, 1770<sup>3</sup>. Another expedient, on which I shall comment presently, was more frequently adopted, but was wholly successful only in a few cases.

It appears that from the earliest days of the practice, the dissentient Lords asked the House leave to enter their dissent before the question was put. The request was probably only a compliance with what must be a rule in all deliberative assemblies, that no individual can be allowed to put any fact on record which expresses a particular interest, without the consent of those who act with him. Entries of procedure were matters of course, but personal claims were exceptional, and had to be conceded.

At first it seems that the time within which such a protest might be entered was merely reasonable, and that Peers were allowed—though here by concession of the House—to enter their names to a protest after the bulk of those who drew up and signed the document had appended theirs. But immediately after the practice began, it was found necessary or expedient to put the

<sup>1</sup> See protest ccxxi.

<sup>2</sup> Ib. ccxv.

<sup>3</sup> Ib. ccclviii.

privilege under certain checks. Hence by a standing order dated the 5th of March, 1642, the right of protestation was permitted only if the entry was made on the next sitting day of the House. By an order of the 27th of February, 1722, the further restraint was ordered of 'before two o'clock on the next sitting day.' The entry, except in the earliest times, was made by the clerk, and the Journals were examined from time to time by a Committee of Lords appointed for the purpose.

Soon after the practice of protesting with reasons had been adopted, the older evidence of dissent was also revived, and Peers protested without reasons. Occasionally one or more dissentient Peers sign their names above the protest, or by the side of it, apparently dissenting from the vote but not endorsing the reasons. In the great majority of cases, I have held these names to be those of dissentents without reasons, and have not included them in the lists appended to the reasons. Occasionally, when it was evident that the dissentient accepted the reasons, the names have been inserted.

The documents printed in these volumes are a complete collection of those protests, with reasons preceding, which are contained in the public records of the Upper House. Collections of these papers have been published at various times, before the middle of the eighteenth century, during the excitement of the Middlesex elections of Wilkes, and at the close of the eighteenth century. But none of these editions are complete even for the time over which they are extended. On comparing these collections with the Journals, I find that several of the most important protests have been designedly omitted, or have escaped the notice of former editors, or have even been mutilated. In the present collection the documents have been extracted from the printed Journals of the House, all the volumes of which have been carefully examined.

As the protest was intended for inspection or publication, the House ultimately, after other expedients had been thought of, exercised a censorship over these documents, occasionally ordering that they should be expunged in whole or part. The first example of this mode of action is that taken with the protest of the 8th

of April, 1690, when the Whig Lords order the obliteration of certain reasons impugning the legal validity of the Convention Parliament, these reasons being signed by seventeen Tory Peers. The last instance is the obliteration of a protest composed by Lord Holland, on the suppression of the Irish Rebellion, entered on the 23rd of March, 1801, and erased on the motion of Lord Fitzgibbon (Earl of Clare). With the exception of the expunging of a few words in a protest of Lord Radnor, and a refusal to allow the insertion of a protest by Lord Oxford on technical grounds, this censorship had not been practised since 1722, in which year four protests were wholly or partially expunged. In all fifteen protests have been subjected to this discipline, and generally the obliteration has been followed by another protest as a remonstrance.

In general the reasons had been published before the majority of the Lords took action. Sometimes attention was called to the fact that a breach of privilege had been committed. This was done in the case of the two important protests entered on the 28th of May and 7th of June, 1712, in which the conduct of the parties who negotiated the Treaty of Utrecht was severely condemned, and which were carefully expunged. Similarly, when Lord Holland's protest was published in a London paper, the printer was fined and imprisoned. Of the fifteen expunged protests eleven have been recovered from contemporary pamphlets, of which there is a large collection in the Bodleian Library. Three were sought for in vain from these sources. Of the fourth (Lord Holland's) there exists a printed copy, but it is evidently incorrect or imperfect.

Anxious to make my collection perfect, I made application to Sir John Shaw Lefevre, Clerk of Parliaments, for permission to inspect, and if possible to decipher the expunged protests. I obtained the required permission, and had the great advantage of the good offices of Messrs. Munro and Fulkes. With the assistance of the imperfect copy of Lord Holland's protest, the original was easily deciphered. There was no great difficulty found, except in one or two words which were subsequently conjectured and demonstrated, in reading the protest of the 22nd of January, 1705, in which the Tory and High Church Lords recorded their objections to declaring

the see of St. David's legally vacant, by the deprivation of the notorious Bishop Watson. The second protest against the acquittal of Sommers was read with great difficulty, and some of the words are still conjectural, for the original was diligently defaced. I have no doubt, however, that the reading of Messrs. Munro and Fulkes is substantially accurate, as well from the language of the protest, as from my own examination of the original.

The remaining protest, that of the 3rd of February, 1711, was in a very different condition. It was a defence of the conduct of the war in Spain, before and after the battle of Almanza; and by implication, of the Administration. It had been defaced with the greatest care, precautions having even been taken with a view to mislead any person who might strive to recover the obliterated passages by a careful scrutiny. There was good reason for this anxiety. The page of the volume on which this part of the Journals is written is soiled and worn through in places by the fingers of those who had eagerly and vainly scanned a document of which, as I presume, no copy had been taken by its authors.

On looking a little further on in the volume, I found that the vote for expunging the latter part of this protest had been taken in three portions. The Clerk had written these passages down in the Journal, and was thus unconsciously engaged in baffling the purpose of the majority. But the effect of this incident was obviated by the Examiners of the Journals, a small committee of the Lords, who were appointed, and perhaps still are, to inspect the entries. They had evidently ordered the erasure of the entry—there were, I presume, insuperable objections to the mutilation of the Journal—and the passages were scratched out with a pen-knife, so effectually, that it seemed very unlikely that the original could be gathered from this source. But it was clear that the copy could not have been made from memory, and soon afterwards, Mr. Munro discovered the lost passages in the minute-book of the Clerk. They are now printed for the first time.

In reprinting these documents from the Journals, I have considered myself at liberty to modernise the spelling, to employ a discretion in the use of capital letters, and occasionally to alter

the stops. Once or twice I have ventured on correcting some obvious solecism, which is plainly a clerical error, but has escaped the caution of those who prepared the printed copy for the press. But I have made no other alteration. The expunged protests, the portions of protests which have been expunged, and Lord Oxford's rejected protest of the 27th of March, 1797, are printed in italics.

The dates prefixed to the several documents follow the year from January to December. Up to 1752, the year of the Journals commences on the 25th of March. This alteration appeared to me more agreeable to modern practice, and more convenient for reference.

The names subscribed to the protest are printed in the order of signature, and from left to right. In signing these documents the Peers adhered to no order of precedence, even when the protestant was one of the royal family, and it does not appear that the author of the protest always or even usually signed first. The Lords adhered, it would seem, to their rule of equality laid down early in the seventeenth century, and which declared that the phrase 'high lords' was an irregularity of expression, for that all Lords were equally Peers.

I have thought it desirable to give the Christian name, surname, and rank of the Peer, in addition to his title. It appeared that such an expansion of the ordinary signature would be convenient for purposes of reference, and would serve to distinguish individuals and families, as titles were transmitted or revived. The labour may seem superfluous, but it has been very great.

At first I intended to designate the whole of the signature as it stands in the original by dark type. But I found that such an arrangement would be awkward. In the early part of the seventeenth century, almost all the Peers signed with their Christian name as well as with their title. Towards the close of the century the omission of the Christian name became general, though a few Peers, e. g. the Whartons and Bridgewaters, continued the practice after other Peers wholly abandoned it. Sometimes when a Peer took an additional surname he prefixed it to his title. Thus Lord Halifax used the name of Dunk; Lord Holland that of Vassall;

Lord Fitzwilliam that of Wentworth ; and the late Lord Salisbury that of Gascoyne. Lord Brougham for a time adopted the old custom of prefixing the initial of his Christian name to his title. Spiritual Lords have always signed by their Christian names and their sees.

Scotch and Irish Peers, who are also Peers of Parliament, sign by that title under which they sit. Thus the Earls of Orrery are known in the protests as Lords Boyle. One of the Dukes of Argyll is successively Earl and Duke of Greenwich. In these cases, the Scotch or Irish title is put into brackets. Sometimes the Peer has two Peerages of Parliament of equal rank, as Suffolk and Berkshire, Winchilsea and Nottingham, Oxford and Mortimer, Brooke and Warwick. Occasionally, but rarely, the Peer forgets the rule of Parliament, and signs the protest by his extra Parliamentary title. The Peer almost invariably appends to his name some high office of State which he may happen to occupy, as that of Lord Chancellor, Lord Keeper or Privy Seal, Earl Marshal, or Lord Chamberlain.

However transient or trivial the interest or value of some among these protests may seem, there is a point of view from which every one of them has its special and permanent significance, as it bears on the progress of political opinion, refers to constitutional events, throws light on social practices, or explains the attitude of partisans. I do not disparage the labours of constitutional antiquaries, when I claim for these documents, representing as they do the history of our modern constitution in its concrete form, a very high position as materials for the development of political science, and for the history of those forms under which it appears that modern civilisation will hereafter carry on the functions of government and legislation. Constitutional antiquities, compared with evidence as to the actual progress and working of political life, stand in the relation of a philological treatise on the etymology of a language to the literature which that language contains. I venture on assigning to these protests of the Peers the highest place in the literature of English politics. For a long time they are almost the only authoritative materials for constructing a history of political opinion in England.

After the restraint on the publication of debates in Parliament was withdrawn, the protests occupy a secondary position in political history, though still a very high one. The report of debates has not been undertaken by Parliament itself, but only by private adventure in satisfaction of a public requirement. Naturally, however, the report is imperfect, since the public attention is directed mainly to those persons or those topics in which a temporary interest is felt. In many cases, the protesting Peers have advocated a policy which was unpopular, or have resisted one which commanded public sympathy, and their remonstrance was slighted or even suppressed. Many protests are omitted from the 'Parliamentary History,' and from Hansard's debates, and some are mutilated in these publications. Now it is plain that the omission will be just the reason why the document should be recovered, and it is clear that what it was thought expedient to mutilate is especially significant. Thus for example, the fourth reason in Lord Stanhope's protest of the 1st of February, 1793 (No. cccxii), in which the Government is charged with having deliberately brought about a rupture with the French Republic (a fact which was subsequently proved by the late Mr. Cobden, in his pamphlet entitled '1793 and 1853'), is omitted from the printed report. Similar instances could be quoted. The protest of the Peers against the Licensing Bill of 1743, and that of Lord Brougham in 1850 regarding the Civil List, have not been printed in the several collections of these documents.

A protest is an expression of strong feeling, couched in the plainest language which it was found convenient or possible to use; this language being generally protected, in the case of the protestant, by the fundamental privilege of Parliament, the right namely of free speech on subjects within the proper cognisance of the House. I remember but one instance in the whole of these documents, where the protestant has introduced evidence of a private feeling on a matter of mere personal interest, which is distinct from public considerations. The perfectly unique character of the Upper Chamber in the United Kingdom, whatever be its merits or demerits, has, consciously or unconsciously, constrained

those who have seen ground to dissent from its conclusions, and have availed themselves thereby of the right of putting on record the grounds of their dissent, almost invariably to enunciate their reasons on the plea of the public good. The Lords have always been divided into parties, and it is possible or probable that these parties have taken no higher ground in political action than political parties ordinarily do take. The Peers are a social order<sup>1</sup>, representing, as Niebuhr observed, an hereditary plutocracy, most of their wealth consisting of land. They have therefore the common or collective interests of a nobility anxious to justify its rank on grounds of public utility, and to conserve whatever influence it may possess or acquire; to guard the wealth which they instinctively know is the genuine basis of all rank and most influence, and to favour, as far as is possible or safe, the particular interest which their wealth represents. These are the inevitable tendencies of an hereditary plutocracy, which by the theory of the constitution is invested with legislative powers.

The House of Lords then has a collective interest, which the newest Peer shares with the most ancient, the most progressive with the most conservative. But the Lords are wholly free from the special scandal of such representative institutions as the Commons in the United Kingdom, and the Congress in the American Union. I mean the intrusive representation of sectional interests, and the intrigues of such adventurers as contrive to obtain a sitting, and are successful in forcing a hearing, for the purposes which they support. The House of Lords has never had a railway interest, or a public house interest, or an interest adverse to the reformation of law, or indeed any of that importunate advocacy which disturbs the due course of political action, and perverts the instrument of legislation to private and particular advantage. On the contrary, it has acted as a sharp corrective to some of the risks which the public good runs when Parliamentary measures are manipulated by the representatives of sectional interests. It is only to be regretted that it

<sup>1</sup> On May 4, 1640, the Earl Marshal brought forward a motion for the creation 'of an academy for breeding and training up young noblemen and gentlemen,' and his motion was referred to the Grand Committee of Privileges. The same motion was revived on the 18th of June, 1648, and with the same result. No action followed.

has been irregular and intermittent in exercising its function of censorship over sectional legislation. It is even more to be regretted that it has not indicated the process by which the greater part of the scandal which discredits the House of Commons could be removed.

I have adverted to these topics, because I feel that they should be stated in order to substantiate the importance which I claim for the protests contained in these volumes, as expressions of political opinion uttered under the most favourable circumstances, and embodied in the most significant and careful language; for I am well aware that the importance which I claim on their behalf has not been anticipated. Contemporary pamphlets have only a limited value, for the statements alleged by the writers of these documents are constantly distorted by exaggeration, and by the other vices which characterise the utterances of hired partisans. Official documents are necessarily *ex parte*, unless they are evidence conceded by the importunity of opponents, and even in such a case, as has occasionally been proved, evidence may be garbled into worthlessness. The reports of Parliamentary debates, up to the time that Wilkes baffled the endeavours of the House of Commons to maintain their secrecy, are anything but a record of facts, are indeed little better than partisan pamphlets, containing shreds of truth which cannot be separated from a mass of fiction and verbiage. The protests however are genuine expressions of opinion, the accuracy of which is guaranteed by every precaution.

There are indeed two kinds of contemporaneous writing, which from their outspoken piquancy and apparent artlessness exercise much fascination over readers of a later age. I refer to letters and memoirs, published long after the decease of the persons who have composed them, and the persons whose public character such compositions discuss.

Sometimes the publication of these documents effects a total change in the estimate hitherto entertained of political persons and events. The Stuart Correspondence, unaccountably suspended, has conclusively proved the facts of Atterbury's correspondence with the Pretender, and as conclusively that the distinguished Bishop

of Rochester did not number veracity and honour among his moral qualities. The letters of George III to Lord North illustrate, with singular clearness, the attempts of that monarch to restore personal government, and indicate the measure of success which attended his efforts. But the letters in neither of these collections were intended for publication. It was only by accident that the attempts of Bishop Atterbury's son-in-law to recover the correspondence were frustrated, and George III would not, perhaps, have corresponded with North at all, if he had anticipated that his very plain-spoken letters would ever have seen the light.

Some of these collections have been composed for future publication. Such are those of Horace Walpole. I believe that there is no one at present who is credulous enough to accept Walpole's facts and inferences on any topic where he had any motive for eulogy or censure.

But that class of memoirs, the writers of which collect the gossip of courts and clubs, with a view to secret or posthumous circulation, is the least trustworthy of all political annals. These compositions, from the days of Suetonius and Procopius, down to the most recent publications of the sort, are, I am persuaded, the most mischievous form in which historical occurrences can be exhibited. The writer of such books has every temptation to affect a character of candour, under which to take the fullest licence of malignity, or pruriency. Unfortunately he is sure of readers, who are glad to see the reverse of the picture which the adulation of a former age has exhibited in false colours.

Nothing assists the student of history more than the existence of records which faithfully and dramatically represent the dominant feelings or convictions of a past age. There is no rarer quality in an historian than that faculty of abstraction which takes a man out of the habits, or prejudices, or experiences of the present, and allows him to gather up the facts of a distant epoch, when motives, experiences, and alarms, widely different from those with which he is now familiar, influenced, guided, or frightened the agents of current political action. The student of history has to survey the distant past—and radical change makes late occurrences greatly

distant—through an atmosphere which gives its colour to that which the investigator wishes to view; and just as the astronomer, who analyses the light of a distant star, has to recognise and account for the spectral lines which are due to the earth's atmosphere, so must the historian carefully seclude himself from the disturbing causes of present habit, before he can understand, still more reproduce, with any exactness and fidelity whatever, the successive stages of political opinion. But there is nothing, I believe, which can more materially assist him in this difficult duty of abstraction than the documents which are gathered into these volumes.

From the Revolution to the Reform Bill, the government of this country practically centred in the House of Lords. The administration of the day was always sure of support in the Upper Chamber. The only exception to this permanent state of things was the period of Harley's administration, when the adverse balance was temporarily rectified by the creation of twelve new Peers. But this transient discrepancy between the relation of the two Houses was soon annulled. The majority supported, and with uniform fidelity, the several administrations which followed each other, from the accession of George I, to the time when the nomination boroughs were largely disfranchised. The peace policy of Walpole, the war policy of Chatham, the vacillating policy of Grenville, the fiscal reforms and the reaction of the younger Pitt, the governments of Addington, of Percival, of Liverpool, all commanded successively a working majority in the Lords.

The reason of this is to be found in the facts that the Lords were the patrons of the boroughs, and returned their nominees in exchange for very valuable considerations. On the other hand, the Ministry of the day bribed both nominees and patrons. The Lords regularly threw out the Bill for free and impartial proceedings in Parliament, the purport of which, regularly passed by the Commons, was the extinction of this traffic. But it was a long time before either party turned its attention to removing the cause of the mischief, the unreformed representation of the people. It is possible that the warmth with which the Reform Bill of 1832 was denounced was not so much grief at the loss of this patronage, as

the conviction that the relations of the two Chambers would be less satisfactory, when one of the Houses ceased to be dependent on the other.

I am persuaded that the success of the Revolution of 1688 depended in the main on the fact that a majority of the Upper Chamber was friendly to its principles. The Jacobites were always a small faction in the Lords, but they were often a strong and compact faction in the Commons. The Lords, in point of fact, as the hereditary advisers of the Crown, as the creations of its pleasure and favour, and as the principal members of the Court, had offended the exiled King more than any other class of men could have done. The revolution of 1648, on the other hand, was a revolution initiated by a section of the Lower Chamber and completed by the army. Its authority was therefore always in dispute, the vast majority of the Lords had always resented and repudiated it, and reaction against it was inevitable and speedy. In every political system, the permanence of power resides with those who add a natural or permanent concentration to their power, and a collective interest has supplied this concentration in an exceptional manner to the Lords. Of course it also supplied the same body, under the circumstances alluded to above, with the means of effectually supporting, and therefore of practically guiding the policy of an administration. Adherence to the principles of 1688 was, therefore, the guarantee of aristocratical as opposed to monarchical government, as George III clearly understood.

In the period then to which I have particularly referred, the protests have a peculiar value. It was seldom the case that any important political movement failed of an enthusiastic advocate in the Upper House, and of a protest against its repudiation or delay. It is clear also, that the strongest interest was constantly felt in these avowals, that they are real and concentrated manifestoes of current opinion, unpopular with the majority at the time, but profoundly cherished and emphatically uttered by an earnest minority. And similarly the policy of the majority, either in government or legislation, was constantly subjected to serious but unavailing criticism. The student of these documents will dis-

cover the origin of many principles and practices which have become constitutional or habitual, and will be able to detect occasions on which a departure from ancient traditions has been severely commented on, as the concession of an unwarrantable privilege, or the abandonment of a necessary check. It is true that just as, in the material economy of society, the consequences of neglecting or violating a fundamental law of political economy are partly obviated by the compensating powers which society has its command, and by which it contrives a partial escape from a mischievous policy; so an elastic constitution is able to mitigate the effects of an unwise or negligent course of action in public affairs. But no indirect process will ever wholly neutralise the influence of a political error. In many cases these protests suggest the origin of the error, and though the consequences which the protestants predict have not always ensued, the prediction has failed in most cases only from the fact that the constitution has discovered the means of indirectly meeting the evil.

I will attempt to illustrate my statements by an instance. It will be, I presume, admitted by all students of English history, that no feature in the English Reformation was more characteristic than the right assumed by lay authority of defining, either with or without the assistance of the clergy, what should be the doctrine or discipline of the national Church. Nothing would have been repudiated more decisively by a statesman of the Tudor, the Stuart, or the earlier Hanoverian times, than the theory, now passionately asserted by some ecclesiastics, that no alteration or modification of the religious tenets accepted by a national Church is possible, except in an ecclesiastical assembly. From the days of Henry VIII down to the last revision of the Anglican ritual, laymen conceived themselves to be authoritative on matters of faith and discipline. Nothing offended the early Parliaments of the Stuart kings more than the claim to legislative independence in matters ecclesiastical usurped by Bancroft and Laud, and nothing was resented more contemptuously as soon as effectual resentment was possible. After the Restoration, the Prayer Book was revised by the Lower House, *i.e.* the Long Parliament of Charles II, as a matter of course, and

could have been altered at the pleasure of the Legislature after it left the hands of the divines<sup>1</sup>. There is, I believe, no constitutional position more certain than the historical claim of the laity in Parliament to define the doctrines of the Anglican Church.

These principles are laid down with singular distinctness in a remarkable protest of the 5th of April, 1689 (No. lxvi), entered after the rejection, by an equality of votes, of a motion that the Commission to discuss points of difference between Churchmen and Dissenters, with a view to carrying out the Comprehension Bill<sup>2</sup>,

<sup>1</sup> The following facts, extracted from the Journals, will serve to establish the statement made above. The Act of Uniformity, drawn up by all the lawyers or 'gentlemen of the long robe' in the House, was introduced in the Commons and read for the first time on the 29th of June, 1661. The House referred the Act, with the Prayer Book of 1604, to a very numerous Committee (165 members) on the 3rd of July, which, within five days of its appointment, reported the Bill and the Prayer Book, with several amendments, to the House. The Commons annex the Prayer Book of 1604 to the Act, but on the recommendation of the Committee, 'take out,' or 'obliterate two prayers before the Reading Psalms.' They then pass the Bill (9th of July), and speedily after this, Parliament is 'adjourned' for nearly four months (30th of July—20th of November). Meanwhile and subsequently, i.e. between the 8th of May and 20th of December, the King invited the two Convocations to revise the Liturgy, the revision of the Book commencing on the 21st of November. The Convocations made considerable changes in the Offices. These were approved by the King, 'with the advice of his Council,' and were sent to the Lords with a royal Message. The revision was thereupon adopted by the Lords, and sent on to the Commons, after some trifling alterations had been made. On the 15th of April, 1662, a Committee of the Commons compares 'the two books' and the question 'whether debate should be admitted to the amendments made by Convocation in the Book of Common Prayer' was negatived by 96 to 90 on the 16th of April. But while the Commons, in deference to the King's message or proviso, suspended, on this occasion, their right to revise the liturgy, (though as the division shews, with considerable reluctance,) they immediately and unanimously voted, 'that the amendments made by the Convocation, and sent down by the Lords to this House might, by the order of this House, have been debated.' I add this note, not to raise or debate the comparatively trivial question 'whether the Legislature did alter the liturgy in 1662, after it left the Convocations,' but in order to shew that both Houses were clear that they had a constitutional right to do so. It is remarkable that Pierce was the chairman and reporter of the Committee of the 3rd of July, 1661, and a teller for the majority of the 15th of April, 1662. There are, of course, numerous contemporary pamphlets bearing on the subject. Dr. Cardwell's account of the matter contains several errors of a very misleading kind. He could not have consulted the Journals, or even Kennett.

<sup>2</sup> The Comprehension Bill may be found in Dr. Stoughton's 'Church of the Revolution,' p. 461.

should consist of an equal number of laymen and clergymen. I have no doubt that the principal reason why this Bill dropped in the Commons was the conviction—fortified by the experience of the Hampton Court and Savoy Conferences—that no comprehension was likely, if the clergy only were to be consulted as to the standards of conformity; but there is also no doubt that the persons who introduced the Bill, and those who insisted on this mixed Commission, intended to introduce radical changes in the doctrine and ceremonies of the national Church.

The opportunity was lost, and the subsequent attitude of the non-jurors rendered the revival of the project inconvenient. But the failure of the attempt and the repudiation of the principle, though under such exceptional circumstances, undoubtedly assisted the High Church reaction, and the extravagant pretensions of Convocation in the reigns of Anne and George I. The Comprehension Bill, and the mixed Commission were not revived, when the Whigs were again in the ascendant, but Convocation was silenced. Had Nottingham's Bill with its attendant Commission been carried—and Nottingham was the stanchest of High Church Tories—there is no reason to doubt that the national Church would have been, for a long time at least, an inclusive body, and that the laity would have asserted, beyond risk of future cavil, the constitutional authority of Parliament in defining or modifying the doctrines, ritual, and discipline of the national Church.

The protests have a further value as literary compositions. As soon as they were written with a view to publication, or at least inspection (and I am persuaded that the occasional attempts to punish the publishers of these protests was an unconstitutional stretch of Parliamentary privilege at all times), great care is taken, as a rule, in the language selected to convey the sentiments of the writers. Unfortunately it is generally impossible to discover the actual authors of the documents. It is said, with what truth I am unable to decide, that many of those remarkable protests which are subscribed by Lord Holland were the composition of Mr. Allen, the author of the great work on the royal prerogative, and the critic of the Lords' report on the dignity of a

Peer. It is almost certain that all the protests which bear Atterbury's signature were written by that prelate, and it is probable that some of those which issued from the Tory party during the reign of Anne could be traced to the same author. At any rate, there can be no doubt that the protesting Lords, as a rule, employed the best literary skill at their command, in order to make their objections as striking and pungent as possible, and at the same time to convey in as grave and dignified a manner as they could, the importance of the topic on which they dissented from the majority.

As I have already stated, the whole of the protests entered on the Journals of the Lords have been included in these volumes. Of course, whether one considers the object against which the protest is entered, or the reasons alleged in defence of the dissent, or the names by which that dissent is fortified, these documents are of very unequal value, though I venture on thinking that, as they are all genuine and significant expressions of contemporary feeling, hardly one of them is without its historical interest or place.

I did not therefore feel myself justified in making a selection or omitting parts of these documents, on the ground that I should in this manner designate those which I might consider of higher historical or political importance than others. In point of fact, the collector of materials for history can never safely neglect any actual record which throws a positive light on past transactions. For obvious reasons, the record of facts, up to a comparatively recent time, is exceedingly imperfect, and that of opinions is far more defective. The diaries of Pepys and Luttrell are invaluable materials for the history of England, from the Restoration to the accession of the Hanoverian family. But the former was an ill-natured gossip, and the other was a mere collector of newspaper cuttings and town talk. In the same way, the reasons which led Lord Radnor to object to the licensing of country theatres, those which induced Lord Auckland to dissent from an incident in the old process of divorce, and those which moved Lord Lauderdale to record his opinions on very many matters of trade and currency, may seem to have only a very transitory value. But they do possess this

value, that they are records of strongly entertained opinion, and that they can all be made to assist in the construction of the highest history, the elucidation namely of the causes, which have assisted or retarded the progress of civilisation.

The political significance of the House of Lords has been so materially modified since the first Reform Bill, that I purposed originally to carry this collection down no farther than that epoch. On reflection, however, I saw that such a plan would have led to the omission of much important material for the history of political opinion in our own time. It is perhaps to be regretted that the practice of protesting has, except on rare occasions, survived its older significance. In the present day, a protest is frequently spoken of as an absurdity. Since 1832 it has been often uttered on behalf of the conservative forces of society, and the conservative forces of society are immeasurably more powerful, in all governments which concede the ordinary rights of free speech and innocent action, than those of attack. It takes infinite labour to effect a necessary change, one I mean in which almost every one acquiesces as soon as the change is made. To protest against such a change is almost as grotesque and misplaced as to protest against a law of nature; for it is to identify oneself with the patronage of an exploded and wholly untenable fallacy, the most painfully ludicrous position in which an honest man can possibly place himself.

I do not know whether the British nation entertains a very high value for a House which is theoretically irresponsible, and is directly representative only of a very few and those limited interests. Probably it does not, for it has never in the numerous, thriving, and well-governed colonies of British origin, attempted to originate any institution even remotely resembling the House of Lords. It may be safely asserted that it never will. But the British nation, caring little for forms of government, cares infinitely for good, regular, and equitable government, and will accept any political process or institution which will effect this supreme end. Whether an ancient institution, in spite of those conservative forces of society which are so prodigiously strong, will rise to the claims of public duty, of intelligent criticism on administrative acts, and

of such high responsibilities as a perfectly disinterested jury assumes and fulfils, or will not, is a question which can easily be answered from the evidence of facts. If the answer is negative, it is very likely that the Upper House may exist for an indefinite period, but it is perfectly certain that it will not act. If the answer is affirmative, the protest of the future will be more insignificant than that of the present, because it will represent an opinion which is not worth preserving, a mere disclaimer of some conviction which the public conscience has adopted, or of some conclusion at which an enlightened expediency has irrevocably arrived.

It has been my business to prefix to each one of these documents a brief historical account of the circumstances under which the protest was penned, and the dissentient Peers expressed their objections to the vote of the majority. Since the period in which the publication of debates in Parliament has ceased to be visited with the penalties of a breach of privilege (and the punishment of the newspaper proprietor who published Lord Holland's protest of 1801, is a proof that this restraint was continued beyond the time of Wilkes), sufficient information on those circumstances has been generally procurable without difficulty from Hansard, the Annual Register, and common historical collections.

In the earlier period, however, it has often been very difficult to discover the circumstances of the case, especially when the protest is directed against some judicial decision at which the House has arrived. For some reason, the record of appeals decided in the Upper House, for the early period during which the House exercised this judicial function, is very imperfect. It is possible that, as the practice of limiting the jurisdiction of the House in cases of appeal to such Lords as have had the benefit of a legal education and judicial experience was comparatively late, the collectors of precedents set small store by the reasons which induced a majority of their Lordships, who might have had a very rough acquaintance with law, to determine on reversing or maintaining the decisions of a technically inferior court. I have therefore often been able to trace the circumstances of the protest, only after a laborious search in contemporary pamphlets.

It has also been sometimes difficult to arrive at the facts when protests have been directed against private Acts, dropped Bills, and motions made before the practice of reporting debates became general and permitted. The record of transactions in the earlier Journals is singularly jejune and formal, and seldom throws any light on the events which led to the protest.

I have abstained from all comments on these documents, beyond such statements as seemed necessary in order to make the protest intelligible. To have discussed the arguments contained in the protests would have swelled these volumes to an inconvenient bulk, for it would have involved a lengthy estimate of a very varied series of political events. But I am persuaded that no adequate comprehension of the facts, out of which the constitution of our experience has been developed, can be gathered without a careful study and judicious interpretation of these documents. There is no part of English history which has been worse written, which is so imperfectly understood, and which is so distorted by partisan comment, as that which lies between the accession of Anne and the death of George IV. During this period the protests are of the greatest value. In them can be traced the germ of all those changes which have so materially modified the British Constitution, and have so completely displaced political forces.

Down to the outbreak of the American war, protests were very numerously signed. They were generally at that period instruments by which that portion of the opposition which acted together, and was most energetic in resisting the administration of the day, expressed its united opinion. After the American war, protests are far less numerously signed, except on marked occasions. They become the record of the reasons which a small minority or even an individual had for dissenting from the policy which Parliament or the Upper House adopted.

I have annexed an index of the names appended to the protests, and another of the subjects treated in them<sup>1</sup>. The first of these

<sup>1</sup> The Christian names and the dates of accession to the peerage are generally taken from Burke and the reprint of Nicolas' historic English peerage, though I have occasionally been obliged in the case of Scotch peers to consult Douglas and others.

may have a peculiar interest to those who care to study the history of English political families, and who wish to trace the persistence or fickleness with which the representatives of such families have followed the traditions of their origin. There are, if I mistake not, names which will receive additional illustration from the facts and opinions recorded in these volumes. There are curious instances of consistency and restlessness among the historical families. The houses of Russell and Cavendish have rarely swerved from the traditions of progressive opinion. Those of Egerton, Bathurst, and Finch have been as regularly their opponents. But on the other hand there are seldom two generations of Cecils, Stanhopes, Stanleys, and Berties who have thought and acted on the same lines. Some families, as I have said before, seem to have stood almost alone on political topics, as the Foxes and the Kings. If we are to be guided by what nearly everybody now allows to be wise, there has rarely been a wiser or greater statesman than Lord Holland, none who more entirely deserves the respect of Englishmen.

It was also necessary to make a somewhat elaborate index of the subjects treated in these documents. The protests are not merely relative to a great variety of topics, but they are discontinuous comments on political questions. Besides, they are, with rare exceptions, *ex parte* criticisms. No one can estimate the full significance of them, unless he couples them with the study of the history with which they are connected, unless he looks at the setting of the stones, as well as at the stones themselves. I have attempted in the introductions, to give as concise an account as seemed necessary of the circumstances which evoked the protest, but I am still conscious that the work must appear fragmentary and disjointed. The object of the second index is, therefore, the supply of some further means by which the reader or student of these volumes may detect the place in the history of Public Opinion which these documents severally fill. I may add that references to expunged protests are, like the originals, printed in italics.

In conclusion, I may suggest that there is an indirect, but

important use in publications such as this is. I am well aware that works entailing much original research, but supplying materials rather than picturesque and romantic narrative, bring their authors no profit and little fame. But they may serve two important ends. They may form a text for the teachers of history, and materials for the compilers of those lively volumes which appear so frequently at the present time, and which profess to make the English people acquainted with the progress of the race. It cannot, I presume, be doubted that the teacher would find it a convenience and advantage if he employed original documents and authoritative expressions of contemporaneous opinion, instead of the comments of those who can only express their own judgment, and who may misinterpret the facts which they discuss or criticise. The importance of such instruments of exact information is increased in the University of Oxford since that ancient corporation has decided to teach Law without history, and history without law, a divorce which is perhaps dangerously violent. Still, if a fragment only is to be studied, it would be well that the knowledge of the fragment should be accurate, and that the student should be acquainted rather with contemporary circumstances than with modern generalisations.

I am also disposed to believe that this collection will be of use to the historian. Hitherto these documents have been accessible only in the large volumes of the Lords' Journals, now more than a hundred in number. It is probable that the Journals are to be found only in the largest libraries. Besides, no little labour is required, even after the document is discovered, in collecting the facts which illustrate the subject. Now it is seldom the case that the writers of modern history have made full use of the Lords' protests, even when the record might have given great aid to the interpretation of the facts. For example, nothing can be more lucid and accurate than the account given by Macaulay (*History of England*, chap. xiv) of the proceedings taken by the two Houses in the case of Oates. But I cannot help thinking that even this account would have been more exact and instructive if the writer had consulted the five protests on this subject in-

stead of, apparently, confining his attention to one. A similar criticism may be made on the account which the same writer gives of the trial of Lord Mohun (chap. xix). Now what may be said of particulars which escaped the great learning and comprehensive inferences of this eminent writer could be stated with much greater force of inferior compilers. A collection of similar documents bearing on the later period of English history, and containing such instruments as the Bill of Rights, the Grand Remonstrance, the Instrument of Government, the Millenary Petition, the Comprehension Bill, the Act of Settlement, the Occasional Conformity Bill, with others buried in forgotten volumes or still unpublished, but discoverable in the Archives of either House would be of infinite service to the gayer authors of English history, would save them from many errors, or leave them or their critics without adequate apology.

I have found after several attempts that a table of contents to these volumes would tend to confuse the reader rather than assist him. I have therefore thought it best to summarise the documents in the following manner.

One of the protests of the Long Parliament, dated the 24th of January, 1642, on the celebrated Militia Bill, contains thirty signatures of Lords belonging to the Parliamentary party, and was entered just after the attempted arrest of Kimbolton and the five members. This number is not exceeded till a protest is entered against the third reading of the Bill for Fenwick's attainder on the 23rd of December, 1696, when forty-one Peers signed. This number is again exceeded by that of the Peers who protested against the vote declaring that the Commons had made good the first article of Sacheverel's impeachment, when fifty-one signed, on the 16th of March, 1710. Fifty-seven Peers protested with reasons against Pitt's resolutions on the occasion of George III's first attack of insanity, on the 29th of December, 1788. Fifty-five Peers protested against an order of the House made on the 20th of October,

1820, requiring the production of Powell's Correspondence with Colonel Browne, a critical vote in connexion with the proceedings taken against Queen Caroline. Seventy-seven Peers signed the first protest against the Reform Bill, on the 13th of April, 1832, and eighty-eight signed that of the 25th of June, 1846, against the abolition of the Corn Laws. Forty-three protested with reasons against the repeal of the Navigation Acts; and sixty-one adopted on the 12th of July, 1869, the late Lord Derby's reasons against the Irish Church Bill.

The protests of 1711 are signed by the Whig Peers whom Sacheverel's trial and the intrigues of Harley and Bolingbroke ejected from power. Those from the accession of George I to the banishment of Atterbury, 1715–1723, are chiefly the work of the Jacobite party in the Lords, whose leaders were Atterbury, Lord Lichfield, and finally the Duke of Wharton. These documents are also numerously signed, particularly during the proceedings on Atterbury's case, when the number of signatures is generally from thirty-five to forty. The number signing the protest against the Regency Bill, on the 28th of December, 1810, and on the occasion of George III's final attack of insanity, is forty-four.

Several protests are very short. One, however, is very lengthy, that drawn up and entered on the 15th of March, 1813, and apparently composed by Lord Erskine, on the Banbury Peerage case, a claim which had been made for a century and a half, and which was decided, perhaps finally, on that occasion. I say perhaps finally, for Sir Harris Nicolas, in his work on adulterine bastardy, while he criticises adversely the decision at which the majority of the Law Lords arrived—several lay Peers, and among them the Duke of York signed the document—states that evidence not alleged in support of the claim, but of a very conclusive character, has been found to exist, and might be brought forward.

Members of the royal family rarely signed protests till the reign of George III. The Duke of York, afterwards James II, signed, on the 25th of July, 1663, a remarkable protest against a rider to the Act of Uniformity, which was accepted by the Lords in Committee, but which was subsequently dropped or omitted, the effect of which

would have been to materially modify, or explain away, the stringency of that act. Similarly, Prince George of Denmark (Duke of Cumberland) signed a protest in favour of the celebrated Bill for 'free and impartial proceedings in Parliament,' on the 3rd of January, 1693, at the instigation, it is said, of Lord Marlborough. But none of the Princes of the House of Hanover took part in the insertion of these documents till the occasion of George III's first illness. Thenceforward, however, the royal Dukes frequently signed protests, the late Duke of Sussex having often adopted this action, especially on such occasions as those on which law reform and commercial freedom were claimed by the protesting Peers.

There have always been some Peers who have habitually adopted the practice of protesting, though they may not have had many or even any followers. Such persons were the Earl of Anglesey, before and after the Revolution, the Earls of Abingdon, Radnor, Stanhope, and Oxford during the American war and the early years of the French revolution; Lords Holland and King and the Earl of Lauderdale during the first quarter of the present century, Lord Brougham, Lord Monteagle, and Lord Redesdale in later times. Between 1624 and 1755, during which time three hundred and thirty-three protests were entered, twenty-five have one signature only, but between the latter date and the present time, two hundred and four have only one signature, and very many have only two or three.

The practice of protesting has been intermittent. As I have stated, it commences with the Long Parliament. Thirteen documents belonging to this period, including the memorial of the twelve Peers and the Bishops' protest. (March 18, and December 30, 1641). There are none, however, in the years 1643-1645. Nor are there any between 1648-1659 inclusive, the House of Peers having ceased to sit between 1649 and 1660. During such time as Parliament sat in Charles II's reign, the practice of protesting became common, forty-five belonging to this period. There are four protests in James II's reign (of course in the year 1685), one of these, by Lord Anglesey, being a singularly bold dissent from the projected

reversal of Lord Strafford's attainder. From 1689 to 1705 inclusive there is no year without one or more of these documents, but there is none in 1706. There are none for the years 1720, 1728, 1738, 1745, 1748, for the five years 1750–1754, for 1757, for the three years 1759–1761, for the years 1764, 1765, for 1790, for the years 1803, 1804, 1859, for the three years 1862–1864, and for 1868.

The most numerous protests are found in the years 1689, 1690, 1701, 1721, 1722, 1723 (twenty being enrolled in the year 1722, four of which were wholly or partly expunged, and eighteen in 1723), in 1809, when twenty-two are entered, in 1819, 1828, in 1832, when nineteen are entered, in 1833, 1839, 1840, and in 1845, when nineteen are entered. As may be anticipated, this activity is most frequently displayed in times when questions of more than ordinary gravity or interest were debated and decided in Parliament, or when resistance to the policy of the party in power was more than usually dogged and uncompromising.

The protests of the Long Parliament are, with one exception, uniformly in favour of the Parliamentary party, as I have stated before<sup>1</sup>. After the Restoration, the first protests are directed against a reaction which threatened to invalidate legal conveyances made during the interregnum, and which needed all Clarendon's influence to stem. Two of these protests (xiv, xvii) are probably

<sup>1</sup> The following document, discovered by Mr. Munro among the papers preserved in the archives of the Lords, appears to be a protest, and worthy at least of a place in a note. It is not entered in the Journals, but is signed 'Astrea.' I am not able to determine who is intended by this signature. It is not endorsed. The facts it refers to are as follows. The King was at Oxford after Edgehill (October 27, 1642), and on the 3rd of November, Lord Grey de Warke, acting Speaker of the Upper House, wrote to Lord Falkland, one of the King's secretaries, asking a safe conduct for a Committee of both Houses who might negotiate the terms of peace. A letter is returned next day from Reading signed by Edward Nicholas, also the King's secretary, and informing Lord Grey de Warke that the King will receive under safe conduct any number of persons, after notice given, not exceeding thirty, provided their names are not included in any list of persons declared traitors by the King, against whom he has notified that he intends to take proceedings. The Committee of the Houses on the 5th of November nominate the Earls of Northumberland and Pembroke for the Lords, and Lord Wenman, Mr. Pierrepont, Sir John Evelyn of Wilts, and Sir John Hippisley for the Commons. On the 6th of November (Sunday)

the composition of Clarendon. Most of the other protests of Charles II's reign refer to the judicial proceedings of the Upper House, and its quarrels with the Commons. But there are some documents of no little historical interest among these protests. No. xxi, by Lord Anglesey, complains of the permission given to export foreign coin, and of restraints put on the Irish and Scotch cattle trade. Nos. xxx and xxxii are on the banishment of Clarendon, the first of twenty-seven enemies, the second of one friend. Four protests of 1675 (xxxix–xlii) refer to the imposition of an oath on Peers, and three of 1678 (xlviii–l) are on the case of Lord Purbeck, and the question whether a Peer can surrender his dignity by any legal process. Some of the last protests of this reign bear on the movement against the Roman Catholics and the Duke of York. The only protest of constitutional importance in the reign of James II, is that against reversing the standing order of the 19th of March, 1679, by which the continuance of an impeachment as well as other appeals and writs of error is enforced, notwithstanding a dissolution, No. lix. The older standing order was revived on the 25th of May, 1717, when a protest was also entered, No. clxxxviii.

The consolidation of the two historical parties at the Revolution leads to the systematic use of the privilege of protesting. Most of the documents in the first year proceed from the more energetic Whigs; such as lxiv, lxv, which object to enacting the obligation of receiving the Sacrament according to the usage of the Church of England; lxvi, which protests against the rejection of the mixed

the King, through Lord Falkland, declines to accept the presence of Sir John Evelyn on the ground alleged. On the 11th of November occurred the affair of Brentford, which broke off the negotiations.

'November 5, 1642.

'Whereas the Lords have resolved to send two Lords of this House as messengers with a petition, whilst his Majesty doth in his letter, sent as an answer to their last message, more than intimate if not plainly profess that some of their members are traitors, and whereas this House doth, without any revocation by his Majesty of this his declaration by sending two of their members, seem in my opinion to allow of this his declaration, I do by their leave enter my protestation against it as a thing very prejudicial to the liberty of the subject, and wholly against the privileges of Parliament.'

Commission for the revision of the liturgy; lxvii, which objects to the lenity shown the clergy in the matter of oaths, and several which bear on the case of Oates. There are also protests (lxiii) against the projected scheme for trying Peers accused of treason, repeated in 1690 (lxxvi); against pleading pardons in bar of impeachment (lxxv), and one from the High Church party against a Bill invalidating the forcible or fraudulent marriage of minors.

In 1690, protests, generally proceeding as before from the Whigs, serve to illustrate further the efforts made to take securities for the constitution. The rejection of certain words entered in a Bill for the restoration of corporations, which words alarmed the Lords, is the subject of No. lxxvii, with lxxx. No. lxxviii is an expression of feeling roused by the omission of one word from a Bill affirming the legality of the Convention Parliament. The Tory party made a counter protest, which was expunged, this action being the subject of another protest (lxxix, lxxx). No. lxxxii is a document of considerable importance, bearing on the jurisdiction of the Lord High Admiral, and the transference of his functions to a body of Commissioners. This protest is signed by Peers of both parties. In 1692, the most important protests bear on the right of employing proxies (lxxxv) and on a tack of the Commons (lxxxvi, lxxxvii). In 1693, occurs the first of these efforts for purifying the House of Commons by excluding place men, and a protest (lxxxix) against its rejection in the Lords<sup>1</sup>, and the celebrated protest of Lord Mulgrave (afterwards Marquis of Normanby and Duke of Buckingham) against the licensing of the press (xc). Another protest, signed chiefly by Bishops, and bearing on privilege of Parliament being extended to the King's servants, roused the wrath of the majority, and its last clause was expunged (xcii). A singular protest (xcvii) belongs to 1694, the purport of which is an objection to the Triennial Bill, founded, it seems, for the document is very short, on the

<sup>1</sup> The same Bill was presented in 1694, and passed (I refer to those years only when protests with reasons are given), xciv. On this occasion the King refused his assent.

theory that Parliaments should not have so long a duration as three years.

The session of 1695 established an important precedent in peerage claims, the claimant of a peerage by writ being Sir Richard Verney (c). See also evi on the same subject. No other protest occurs in this year, except one bearing on a scandal in which the Duke of Leeds, Lord Normanby, and others were supposed to be implicated. Two protests are entered in 1696 against the bold scheme of the recoinage devised by Charles Montagu, one (cv) against an apparent claim of Judicature by the House of Commons in reference to returns, another on a point of procedure in Bills, and another on the attainder of Fenwick. The protests of 1697 are very brief, and refer (cx) to the qualification of Members of Parliament, and to an Act intended (exi) to restrain brokers and stock-jobbers. Those of 1698 (cxii, cxiii, cxiv) to the irregular manner in which the Countess of Macclesfield (the reputed mother of Savage the poet) was divorced, to the place of the Commons in an impeachment, and to Montagu's scheme for remodelling the East India trade. In 1699 there is only one protest (cxv) directed against a tack, but interesting, because it refers to a Bill under which the grants of William III to the Bentincks and Keppels were restrained. The same subject is discussed in protests cxix, cxx of the following year. The precedent of Lord Macclesfield's divorce is followed in the case of the Duke of Norfolk, but under protest, in 1700 (cxviii). In the same year the liability of the Crown to the bankers' debt of 1672, and the anger of the English at the Darien plantation form the subject of protests cxvi, cxvii.

The year 1701, as I have already stated, is fruitful in protests. Most of them arise from the unpopularity of William's Ministry consequent upon the publication of the Partition Treaty and the acquittal of Sommers and Orford. Three protests (cxxvi, cxxxv, cxxxvi) signed generally by the Tory Lords, and bearing on the trial of Sommers, were expunged. Two other protests (cxxxvii, cxxxviii), inserted by Lord North and Grey and Lord Peterborough respectively, comment on the quarrels which the procedure

against the Whig Lords had caused between the Houses. But in 1702, in consequence of Louis XIV having acknowledged the son of James II as King of England, the parties were temporarily united, and two protests only are found, both by the extreme members of the Tory party (cxxxix, cxl), which are directed against the attainer of Mary of Modena, and the abjuration oath of 13 and 14 William III, cap. 22. Part of the second protest was expunged.

The protests of 1703 are not of great importance. They refer to the status created for the Queen's husband, George of Denmark, to the jurisdiction of the Lords (cxlii), to the qualification for the House of Commons (cxliv); and to the printing of Bills by the Upper House (cxlv). Those of 1704 refer to a scheme for pressing soldiers (cxvi, cl), and to the Scottish plot (cxvii), revealed to the Ministry by Sir John Maclean. In 1705 the protests refer mainly to the proposals made for securing the Protestant succession, and inviting the Princess Sophia to take up her residence in England (cli, clii, cliii). Two other protests reflect on the ecclesiastical squabbles of the time, one (cxlix) on the rejection of a petition by the deprived Bishop Watson, which protest was expunged, another against the resolution of the Lords (cliv) that the Church of England is in no danger.

The protests of 1707 and 1708 all refer to the Scotch and English Union. Only one (clx), however, disputes the principle of the Union, most attack its details. These are principally three, the proportion of the land tax payable by Scotland, the compensation for real or presumed losses incurred by the Scotch, and the proportion of customs and excise payable by the Northern kingdom. It was argued that in these particulars the Scotch were treated with undue favour. The third objection is taken at the number of Peers supplied from Scotland, and the mode of election for this contingent. The jealousy felt by the English peerage towards the Scotch nobility was speedily illustrated by its famous resolution in the Duke of Hamilton's case (see clxxv). In 1709 the principal protests are directed against assimilating the English and Scotch law of treason, two of these protests (clxiii,

clxiv) being numerously signed by the Scotch elective Peers (the former by twelve, the latter by sixteen), besides gaining the adhesion of the Earl of Greenwich and Duke of Dover, i.e. the Dukes of Argyll and Queensberry.

The protests of 1710, five in number, refer without exception to Sacheverel's trial, though the language of the protests is directed against real or supposed irregularities in the conduct of the case. As is well known, the unsatisfactory issue of this trial led to the downfall of the Whig administration, the elevation of Harley and Bolingbroke, and the negotiation of the famous or infamous Peace of Utrecht. With one exception, referred to above as the disqualification of the Duke of Hamilton (clxxv), all the protests of 1711 and 1712 refer to the conduct of the war in Spain and to the negotiations for peace. Two of these protests (clxxvi, clxxvii) were expunged, but had, previous to the vote of the House ordering this erasure, been widely circulated. Another (clxxiii) was partially expunged, but has now been recovered<sup>1</sup>. One protest only, chiefly of the Scotch Peers, is found in 1713, and refers (clxxviii) to the imposition of the Malt Tax in Scotland. Two are found in 1714. The first of these (clxxix) is a very important protest against the occasional Conformity Bill, the passage of which was the price paid for the adhesion of Nottingham and the Hanoverian Tories to the less consistent Whigs, and which was carried by a very narrow majority. It is remarkable that five Bishops signed this protest. The second (clxxx) bears upon certain scandals connected with the disposition of the Queen's share in the Assiento Contract.

The collapse of the Tory party, owing to the dismissal of Harley, the disorganised state of the Ministry, the sudden death of the Queen, and the vigour of the Whigs, led to the attainder of Bolingbroke and Ormond (clxxxi, clxxxii). To these attainders protests were made, and Atterbury probably composed most of the documents which issued from the opposition. There is also a protest (clxxxiii) of Lord Abingdon against the suspension of

<sup>1</sup> See above, p. xxiii.

the Habeas Corpus Act during the first Scotch rebellion. The Septennial Act was another measure of precaution, and was remarkable as having been introduced first in the Lords, where it was strongly protested against (clxxxiv), as was also an Act dealing with the estates of recusants and traitors (clxxxv). In 1717 occurs the first protest against the passage of the annual Mutiny Bill, another challenging the resolution of the House of Lords on the conduct of the Oxford University authorities, and a third against the revival of the rule of 1679, affirming the continuance of impeachments after prorogation, the case being that of Harley, Earl of Oxford. There are three protests (clxxxix, cxc, cxci) in 1718 against the Mutiny Bill, all of them probably the composition of Atterbury. A somewhat ludicrous circumstance, the omission, by formal vote of the House, of the words 'of pious memory' from the style of the late Queen, in a Church Building Act, leads to another protest (cxcii), the Act itself being also protested against. The creation of a special body of Commissioners for the purpose of dealing with forfeited estates led to a further protest (cxciv), and the relaxation of the Corporation and Test Acts in relation to the trustees of certain Bristol charities to another (cxcv). A scandal, originated by the misuse of certain funds by the City of London authorities, elicits a protest in defence of the Corporation from sixteen Tory Lords.

During 1720 no protest is entered. The nation was engaged in the South Sea and similar schemes, and Walpole was raised to power at the close of the year. But 1721 is fruitful in protests. The most important of these are, cxcviii, on the South Sea Company; cxcix, ccii, on the Navy; cc, cci, on certain Treaties; and ccv, on the battle of Cape Panzaro. In 1722 very many protests are entered, and four are wholly or partly expunged. One of these latter (ccviii) was an attack on certain concessions made to Quakers, a second (ccxv) on the Freedom of Elections Bill, the other two (ccxvii, ccxviii) referring to the Navy Debt, and the National Debt. A fresh standing order on the subject of protests led to a further protest (ccxi), and a delay in Lord Macclesfield's taking his seat on the Woolsack to another (ccxiv). No protests

are expunged between this date and 1801, when the censorship of the House was exercised for the last time. During the autumn of this year the intrigues of Atterbury were detected, and he, with certain Peers of the Tory party, was sent to the Tower. Nearly all the protests of 1723 refer to the proceedings taken against Atterbury and his accomplices. The exposure of this plot, and the downfall of the prelate, silenced the opposition, and the protests of 1724 refer only to the annual Mutiny Bill. The most important events of the year 1725 were Lord Macclesfield's conviction and sentence, the object of four protests (ccli, cclvi, ccvii, ccvi), and the partial restoration of Bolingbroke, commented on in celiv, ccv. An injudicious and imperfect disarmament of the Highlands is dealt with in ccli.

In 1726 the opposition enter temperate protests against the omission of a recital from the Act of Settlement (cclx), and on certain votes of the Commons on matters of public policy (cclxi). The protests of 1727, three in number, refer to the foreign policy of Walpole's administration, to the dispute with Spain, and the retention of Gibraltar and Minorca. There is no protest in 1728.

Among those of 1729, one refers to the report on the cruelties and extortion practised in the Fleet prison, though it is entered on a technical point (cclxvii). Two others (cclviii, cclix) are very outspoken avowals on a demand for an increase of the Civil List, the protestants hinting that the accounts are garbled. In the next year, an attack is made on the Pension List, the Bill which passed the Commons having been rejected in the Lords (cclxxii, cclxxiii, cclxxiv). Protests against the Treaty of Seville and the employment of Hessian troops (cclxx, cclxxvi) are also found. The Pension Bill is rejected by the Lords again in 1731, and a protest of a very plain-spoken character (cclxxvii) inserted. The same event occurred in 1732 and 1733, with the same effect.

In 1732 four protests are inserted against the imposition of the Salt tax, and in 1733 one against the alienation of the Sinking Fund (cclxxxvii). Another of the same year (cclxxxviii) is the result of an ineffectual attempt to deal with the forfeited estates of the South Sea directors. Three protests (cclxxxix–ccxci) of 1734 refer to the

energetic manner in which certain Peers, who resisted Walpole's excise scheme of 1733, were ejected from their offices. The mode of electing Scotch Peers is the subject of certain protests, ccxcii, ccxciii, ccxcix, ccc, ccci, in 1734, 5, and the presence of soldiers at elections of cccii, ccciii. By this time, the opposition to Walpole had been considerably strengthened by the discontented Whigs.

In 1736 there is only one protest, cccv, against extraordinary powers to be given to excise officers, and in 1737 one only, against the rejection of a proposal to enlarge the income of the Prince of Wales. Two protests of 1739 are directed against the policy of Walpole, as contained in the Convention of Pardo (cccvi, cccviii), and all those of 1740 refer to the war with Spain, and particularly to the instructions given to Admirals Vernon and Haddock (cccix-cccxv). Similarly the protests of 1741 refer generally to the conduct of the war, and by the increasing boldness of their language prove the growing unpopularity of Walpole. One (cccxi) is an elaborate defence of the Bill for free and impartial proceedings in Parliament, i. e. of the policy which sought to exclude persons in the service of the Crown from the Lower House. A very numerously signed protest (cccxiv) is entered at the crisis of Walpole's fall. The only other protest of the same year is against the rejection of a Bill, by which Walpole's enemies strove to procure evidence against him (cccxxv).

Two protests of 1743, probably the composition of Chesterfield, refer to the retention of foreign troops, especially Hanoverian soldiers, in British pay (cccxxvi, cccxxviii), and another protest of the same year predicts the enormous evils which were thought likely to ensue from the licensing of public houses for the sale of spirits (cccxxvii). The employment of Hanoverian troops is again attacked in 1744, and also (cccxxx) a Bill making correspondence with the Pretender and his sons an act of treason. There is no protest in 1745, only one in 1746, on the conduct of the war in Flanders, and also one only in 1747 (cccxxxii), on the abolition of the Scotch heritable jurisdictions. With the exception of an unimportant entry in 1749, no protest is found on the Journals for the next eight years.

From this time, protests signed by one or a very few Peers are of common occurrence. Thus in 1755, Lord Temple protests against the defence of Hanover, Lord Talbot against hiring troops from the Landgrave of Hesse, and both these Peers in 1756 dissent from a Bill allowing foreigners to hold commissions.

Two protests of 1758, and both written by Lord Temple, refer to the inadequacy of the Habeas Corpus Act of Charles II, under certain circumstances. No protest occurs for four years, and in 1762 only one, on the wisdom of carrying on the war in Germany. Two protests of 1763 (cccxl, ccxli) criticise the expedients adopted to meet the demands of the Treasury after the Peace of Paris.

At the close of the same year, a lengthy and energetic protest is entered against the proceedings taken to ensure the conviction of Wilkes. But for nearly three years no other protest is entered. The protests of 1766 are directed against the repeal of the American Stamp Act, and are numerously signed. The protests of 1767-8 relate to the restraint put on the dividend of the East India Company. The only protest of 1769 (cccxlvii) refers to the celebrated case of *Douglas v. the Duke of Hamilton*. The first protest of 1770 refers to the removal of Camden from the office of Chancellor, consequent on the attitude he took in relation to the Middlesex election, and three others (cccxlix-cccli), all signed by Chatham, on the proceedings of the House of Commons in reference to that election. The last protest of the year (ccclii) refers to an extraordinary scene of violence in the Lords.

Two protests of 1771 were originated by the claim of Great Britain to the Falkland Islands; another on the establishment, by Act of Parliament, of a theatre in Liverpool; and a fourth, of considerable length, on the embankment of a portion of the Thames. Two protests of 1772 (ccclv, ccclvi) bear on the Royal Marriage Act, and a third on the East India Regulation Act. Legislation on the Company provokes two other protests in 1773.

The protests of 1774 and 1775 are almost entirely confined to American affairs, war having just broken out, and particularly attack that part of Lord North's policy which consisted in blockading American ports. The exceptions are two protests of

Lord Radnor (ccclxviii, ccclxix); the first against the establishment of a playhouse in Manchester, and the second a sly attack on the Bishops, who had been affronted at the terms of the first protest, and who, through Lord Lyttelton, threatened to move that the protest be expunged. There is no protest for 1776.

The protests of 1777 refer to the additional grant to the King's income. They are couched in very uncourtly terms, one in particular asserting that the King's indebtedness was caused by the corruption of Parliament. Those of 1778, with one exception, comment on the struggle with the American colonies. The exception is a protest, signed by four Peers, against the Chatham Annuity Bill. One protest (ccclxxviii) is an indignant disclaimer of the proclamation issued by the Commissioners sent to negotiate with the Colonies. Two protests of 1779 refer to a motion for removing Lord Sandwich from the Admiralty, two to the expedients adopted for manning the navy, and one (ccclxxxii) to the accession of Spain to the Confederacy which assisted the Colonies. A sixth (ccclxxxii) is levelled against the use of courtesy titles in Parliamentary Bills.

A long and energetic protest (ccclxxxv) against the rejection of a motion to enquire into Contracts and Offices, and another against the rejection of a Bill to exclude contractors from the House of Commons, are inserted in 1780. The dismissal of Lords Carmarthen and Pembroke from their Lieutenancies of Yorkshire and Wiltshire is the subject of another protest (ccclxxxvi). In 1781, the accession of the Dutch provinces to the Confederacy, and the refusal of papers on the subject occasion two protests, the loan a third (cccxc), the Bengal Judicature Bill a fourth. The behaviour of Lord George Sackville at Minden, in 1759, is commented on in two protests of 1782. In 1783, the rejection of a motion to supply information on the emoluments of public offices calls forth a protest (cccxcv), and the failure of Lord Effingham to carry a Bill for the relief of insolvent debtors, two others.

The East India Regulation Bill provokes a protest in 1784, an attempt to improve commercial relations with Ireland, another in 1785. The Act creating the office of Commissioners of Woods and

Forests causes a protest (cccc) in 1786. The method by which Pitt's treaty was negotiated with France is the object of a protest in 1787. The order of procedure in the trial of Hastings is the subject of a protest in 1788, the East India Declaratory Bill of another. In the autumn of 1788, the King became insane, and two protests (cccciv, ccccv), very numerously signed, contain objections to Pitt's regency scheme. The trial of Warren Hastings is the subject of a protest in 1789, and again in 1791, there being no protest in 1790. The second of these protests, signed by Lord Hawke only, is directed against the resolution of the House, to the effect that the prosecution of Hastings was not abated by the dissolution of 1790. The rejection of Fox's Libel Bill by the Lords is the cause of two protests in 1791.

The proclamation of the King against seditious writings (in this case the manifesto of 'the Association of the Friends of the People' on Parliamentary Reform,) led to a protest by Lord Lauderdale in favour of the association, and the passage of Fox's Libel Bill to a dissent from Lord Thurlow and others in 1792. Two protests of 1793 refer to the outbreak of hostilities with France; two to the grant of the barony of Bath to Pulteney's granddaughter, and two more to the election of Scotch Peers in 1790. Muir's sentence elicited a protest from Lord Stanhope in 1794. In the same year two protests are lodged against the employment of certain Hessian troops, a sentence in the second being subsequently expunged by order of the House. The suspension of the Habeas Corpus Act leads to two protests (ccccxxi, cccccxii). The Duke of Bedford's motion on the war with France is entered as a protest, and the vote of thanks to Lord Hood is made the subject of the last entered in this year.

In 1795, Lord Stanhope urged the House in vain to abandon the war with France, and protested. The suspension of the Habeas Corpus Act was the subject of another protest, and the refusal of the Lords to assent to negotiations with the French Republic to a third. The unfortunate recall of Lord Fitzwilliam from Ireland leads to two more, one proceeding from Lord Fitzwilliam himself (ccccxxviii, cccccix). Lord Radnor assails a Bill on the forces in a sixth, the plea being that the Bill wrongs the Militia. The

Treason Bill of 1795, and the Seditious Meetings Bill evoke three other protests.

The vote of credit in the spring of 1796, is objected to chiefly on the ground of the largeness of the sum; the Legacy Duty Bill elicits a protest from Lord Lauderdale, and the information that Spain was hostile another from Lord Fitzwilliam. Lord Oxford's protest, which the House would not allow to be entered on the Journals (ccccxxxvii), is the first in 1797. Two others are inserted on the rejection of the Duke of Bedford's motion to dismiss the Ministry, and a fourth by Lord Fitzwilliam, on certain expressions in the Address, which he conceived derogatory to the dignity of the nation. Two of Pitt's financial measures, the Income Tax and the Land Tax, were the subjects of protests ccccxi—ccccxlii, in 1798, and the failure of the Duke of Bedford's motion for dismissing the Ministry was the occasion of another. The other protests of the year (one excepted on the Militia) are six, and refer to the Irish insurrection.

In 1799, Lord Holland entered his reasons against continuing the suspension of the Habeas Corpus Act, and the Irish Union Scheme (ccccl, ccccli). The revival of a more stringent Treason Bill was the object of another protest, and the rearrangement of the military forces, as it appeared to disparage the militia, to two more (cccclv, ccclvii). A protest of certain Scotch Peers against the small Notes Duty Bill, and two whimsical dissents from Lords Radnor and Abingdon, the former against relieving Freemasons from the operations of the law against secret societies (cccclii); the latter (ccccliv) against the augmentation of the Judges' salaries, are the remaining protests of this year. Two protests of the year 1800 refer to the war with France, three to the Irish Union, and one of Lord Bessborough's (cccclxiii) to the acceptance of a Bill prohibiting the marriage of an adulteress with her seducer. In 1801, two protests were inserted against the continuance of martial law in Ireland. The second of these protests (cccclv) was expunged, and a remonstrance follows. One other protest, that of Lord Camelford, is directed against the continued suspension of the Habeas Corpus Act.

In 1802 two protests were inserted. One is against the payment of the King's debts, amounting to nearly a million sterling. The other is a review of the constitutional principles which govern supply. In 1803 only one protest is inserted (cccclxx). It is from the Duke of Norfolk, and challenges the exemption of foreigners, holding English stocks, from the operation of the Income Tax. There is no protest for 1804.

In 1805 the conduct of Lord Melville as treasurer of the navy originated two protests, and in 1806 his trial led to five more. The case of Justice Fox led to a protest (cccclxxiii) in 1805, and to another (cccclxxxi) in 1806. The transfer to the Crown of the Duke of Atholl's rights in the Isle of Man, is the subject of cccclxxiv. A Bill facilitating trade between the West Indies and the United States, led to a protest by Lord Sheffield, and Lord Radnor (cccclxxxii) again undertook the cause of the Militia.

In 1807, an Act of Indemnity led to three protests, bearing mainly on the issue of an Order in Council. Two Irish Coercion Acts elicited two others. The rejection of the Offices in Reversion Bill called forth another. A fifth refers to the standing order No. 114, regulating the entry of protests. In 1808 four protests refer to the bombardment of Copenhagen, four to Orders in Council. The rejection of Lord Moira's Debtor and Creditor Bill led to a ninth. The renewed failure of the Offices in Reversion Bill elicited a tenth. Lord Grey inserted a protest (ccccxcix) on a clause in the Mutiny Bill. The retaliatory Bills prohibiting the export of Jesuits' bark and cotton wool drew forth two more. The rejection of the Roman Catholic petition two more. Lord Radnor (dv) again protests against the treatment of the Militia, and Lord Lauderdale inserts two protests against an increase of the debt due to the Bank of Ireland from the government. The encouragement given to the distillation of spirits from sugar occasions two more, the stamp duties and the Maynooth grant two more. There are twenty-one protests inserted in the year 1808.

In 1809, the omission of General Burrard's name from the vote of thanks for the victory of Vimiera leads to a protest; Lord Auckland's Adultery Bill to another; the financial system of the

government to a third. Lord Grosvenor protests against allowing the sale of Commissions in the Army, and in dxvi, Mr. Curwen's Bribery Bill is stigmatised as delusive. In 1810 the thanks of the House for the victory of Talavera is made the subject of a protest. Two more refer to the Corn Distilleries Bill, three to the alleged disinclination of the government to exchange prisoners with France, and one to a loan made to the East India Company.

At the end of the year 1810 occurred the King's last illness, when the dispute of 1788 was revived. Nine protests refer to the scheme which the government proposed in 1810-11. One of these (dxxviii) is from Lord Eldon's party, and bears on the refusal of the majority to admit proxies, another on the irregularity of admitting an appeal till the government was settled. The Irish secretary's circular letter led to a motion and a protest (dxxxiv), a private bill authorising a tenant for life to expend a sum of money on buildings to another protest, and the Gold Coin Bill to two more.

In 1812, an energetic protest is inserted against the sanguinary frame-breakers Bill (dxxxviii), and another against the continuance of the Legal Tender Act. A protest against the rejection of a Bill relieving members of the Church of England from certain enactments was also entered.

The Banbury Peerage case led to a lengthy protest, probably the composition of Lord Erskine (dxli) in 1813. Two other protests bear on the East India Bill of this year, and one (dxliii) on the vote of credit granted after the retreat from Moscow. Four protests belong to 1814. One is on the enforced union of Norway and Sweden, another on the abandonment of bounties for exported corn, a third on the rejection of a resolution to put a stop to the slave trade, and a fourth on the quarrel with the United States. Two protests, the second being of remarkable vigour, in 1815 (dxlix, dl), bear on the Corn Law of 1815. The names appended to this protest are even more singular and significant.

Two protests appear at the commencement of the year 1816, one of which is virtually an amendment to the usual Address. The second and third of this year are both from Lord Holland,

one (dli) on the policy of the government, the other on the detention of Napoleon. Two others regret the failure of domestic reforms, and a sixth records the reasons which induced Lord Lauderdale to dissent from the first steps taken to effect a resumption of cash payments. The same Peer in a seventh protest seeks to protect the first London Gas Company from the risks of extending its business and supplying a general want.

The protests of 1817 refer entirely to the measures taken by the government to repress disaffection, by the suspension of the Habeas Corpus Act, and the Seditious Meetings Bill. The Secretary of State (Sidmouth) had even refused to allow the visiting magistrates of Berkshire their statutable right of inspecting the gaol, and this action is consequently the object of a protest (dlxi). In 1818, a Bill of Indemnity, intended to cover the illegal acts of certain officials, leads to a protest, and the Aliens Registration Bill to two others. The haste with which this and other Bills were carried through the House leads to two protests against the suspension of standing orders. There are two other protests of this year, both from Lord Lauderdale, which criticise the Bill for the regulation of the Banks Restriction Act. A third protest from the same Peer is inserted against Peel's scheme for the resumption of cash payments in the summer of 1819.

At the meeting of Parliament in December 1819, Sidmouth brought forward his well-known six Acts, the purpose of which was to coerce the disaffection which prevailed and which was loudly expressed. Nine protests, dlxx-dlxxviii, are directed against these measures. Early in 1820, Lord Stanhope protested against the rejection of a Committee for discovering the means for employing the poor, and six Peers give reasons for objecting to the continuance of the Aliens Regulation Bill. The other protests of 1820 refer to the Queen's trial, the most numerously signed (dlxxxv) proceeding from the Tory Peers. The last four of these protests, entered after Lord Liverpool abandoned the Bill of Pains and Penalties, are all signed by the Duke of Clarence.

In 1821, the attempt of the House of Commons to remove

certain disabilities of Roman Catholics was rejected by the Lords, and a protest (dxci) inserted. The disfranchisement of Gram-pound led to a protest from Lord Lauderdale, the alteration of the Timber Duties to another from the same Peer, and certain changes in the proceedings of the Irish Law Courts to two others from Lords Donoughmore and Redesdale. The Marriage Law Amendment Act leads to three protests in 1822, the Sliding Scale of 1822 to two more, and the Aliens Regulation Continuance Bill to four more (dcii-dciv). In 1823 one protest refers to commercial distress, a second to the subjects debated in the Congress of Verona, and a third to an alteration in the presentments made by Irish Grand Juries. An Irish Coercion Act is made the subject of a protest in 1824 (dcix). The reversal of Lord Stafford's Attainder led to a protest of Lord Radnor, and a clause in a Parochial Settlement Bill to another directed against the action of the Commons. A Bill relieving the Earl Marshal and his Deputy from certain oaths, a precursor of the Roman Catholic Relief Bill, is protested against by the Duke of Newcastle and Lord Abingdon (dcxii).

Measures adopted to suppress the Irish Catholic Association led to two protests in 1825. Lord Holland's abortive attempt to modify the Law of Forfeiture is also made the subject of a protest (dcxv) in the same year. In 1826, the Bank Act forms the material for three protests, and the Corn Law Bills of the same year give occasion for three others. One of these last (dcxx) is an elaborate defence of the old Corn Law. The same subject is again handled in the two protests of 1827.

The protests of 1828 are numerous. Four deal with the Corporation and Test Acts Repeal, one of them (dcxxv) being a remonstrance against introducing the words 'on the true faith of a Christian' into the Abjuration Oath. An unsuccessful attempt to effect an inquiry into Irish distress leads to a protest from Lord Darnley, the Corn Law Importation Bill of the year to four more, one of these, from Lord King (dcxxx), reciting the arguments in favour of free trade, another of Lords Lauderdale and Stanhope, quoting the authority of Adam Smith in favour of high prices

and protection. The Scotch and Irish Note Bill elicits two protests from Lord Carnarvon, Greek affairs, and the blockade of Oporto, two from Lord Holland.

In 1829, the Bill for the suppression of the Irish Association leads to a protest (dcxxxvii) from Lord Redesdale, complaining that the measure was not stringent enough. But the Roman Catholic Relief Bill was the principal business of this session. It gives occasion to ten protests, all from those Peers who opposed the passage of the Bill. Simultaneously with the Catholic Relief Bill, Peel and Wellington introduced and carried the County Voters (Ireland) Bill. This gives occasion to three protests from the same party. The protests of 1830 are on very various subjects. Two are on public distress, one from Lord Holland (dcliii) on Portuguese affairs, and another by the same nobleman, against extending the franchise of East Retford to the hundred of Bassetlaw, another from Lord Lauderdale against the Court of Session Bill, another from the Duke of Richmond against the Beerhouse Bill, another from Lord Holland against the retention of capital punishment in certain cases of forgery, and lastly, one of the same Peer against retaining certain parts of one among Lord Sidmouth's six acts.

The provisions of the Bedford Land Bill led to a protest from Lord Holland in 1831, the Canadian Revenues Bill to one from the Duke of Wellington, the Court of Bankruptcy Bill to one from Lord Eldon. The Methuen Treaty being apparently imperilled by the modification of the Wine Duties, a protest signed by eighteen Peers is inserted. The Irish Tithe Act leads to a short protest in 1832, and the Russian Dutch Loan to another (dclxxxi). All the other protests of this year, seventeen in number, bear on the English, Scotch, and Irish Reform Bills. In these cases the authors of the protests are generally known, and are specified.

Numerous protests are entered in 1833. The war between Holland and Belgium leads to one (dclxxxii), and a local Railway Bill to another. The passage of the words 'on liberal and comprehensive principles' in the education clauses of the Negro

Slavery Abolition Bill, leads to a protest of the Duke of Wellington, signed pretty fully. The suppression of ten Irish bishoprics elicited six protests, Thellusson's Act two more, probably from Lords Eldon and Shaftesbury, though the signatures are the same to both. An unsuccessful attempt to relieve the Jews of their disabilities, by a Bill which had passed the Commons, is the cause of two vigorous protests from Lord Holland and Lord Clifford of Chudleigh. The Royal Burghs Bill leads to a protest from Lord Haddington, the East India Company Bill and the Negro Emancipation Bill to two protests from the Duke of Wellington, and the Bank Charter Bill to another, probably from Lord Wynford.

In 1834 a protest of Lord Brougham (dcxcix) is directed against a Bill of Lord Wynford's for the better observance of the Lord's day. The suspension of standing order 142 leads to a protest from Lord Osborne, and the relaxation of an Irish Coercion Bill to a protest from the Duke of Wellington. Lord Holland (decii) protests against the rejection of a University Tests Bill. Three other protests refer to the Poor Law Amendment Act. One of these is from the Bishop of Exeter (Philpotts), one from Lord Kenyon, and one from Lord Brougham. The first protest of 1835 is from Lord Cloncurry, and is a sharp criticism on the public policy and conduct of the Duke of Wellington. Six other protests of this year refer to the Municipal Corporations Reform Bill. One (decix) is directed against the Roman Catholic Marriage Act of George II (19 George II, cap. 13, Irish), which Lord Clanricarde vainly attempted to repeal. In 1836, one protest from Lord Cloncurry is directed against the Duke of Wellington. Two others refer to the treatment which the Irish Corporations Bill received at the hands of the Lords.

The royal Mint Bill led in 1837 to a protest of Lord Brougham, in which certain constitutional principles are insisted on, the author of the protest detecting an unconstitutional innovation in the measure. The Paupers Removal Bill drew forth another protest from the same Peer, as did the resolutions for the Government of Lower Canada, the appointment of Lord Denman as a Lord Justice in

the Regency Bill, the message for an increased allowance to the Duchess of Kent, and the Civil List Bill. The rejection of Lord Radnor's Bill for a Commission to enquire into the Statutes and administration of Colleges and Halls in Oxford and Cambridge, leads to a protest (dccxix); the Public Works Bill (Ireland) to one from Lord Wicklow, and an unsuccessful attempt to extend declarations in lieu of oaths to others besides certain sectaries named in the Bill to two more.

The measures taken in 1838, consequent upon the Canadian rebellion, led to two protests, and the Irish Poor Law Bill to another. The rejection of Lord Denman's Affirmation Bill to two more. A Bill enabling a mother separated from her husband to have access to her children was lost, and a protest was entered. The Irish Tithe Bill, and the Cornish Tin Duties Bill led to two more, the former from Lord Brougham, the latter probably from the Duke of Wellington (dccxxvii, dccxxxiv).

The protests of 1839 are numerous. The first (dccxxxv) bears upon the serviceable justification of a libel case, in which the *Times* newspaper was defendant. Three others are levelled against the abortive Church Discipline Bill of this year, two being the composition of Bishop Philpotts, the third of Lord Wynford. Next comes a spirited protest of Lord Brougham, against the powers given to the Governor and Council of Jamaica, dccxxxvii, and another from Lord Cloncurry, against the education resolutions of Archbishop Howley. The Penny Postage Bill elicits a short protest from Lord Manvers. A protest (dccxlii) signed by twenty-eight Whig Peers, and the last to which the great Lord Holland puts his name, repudiates certain resolutions of Lord Brougham in relation to the Prerogative of Pardon. Two more of this year bear on the Poor Law Commission, two, probably from the Duke of Wellington, on the suppression of the Slave trade. One other protest of the Duke (dccxlvi) refers to a question of procedure.

The subjects with which most of the protests of 1840 are concerned, are the reform of the Irish Corporations, which evokes three; the ecclesiastical duties and revenues Bill, i. e. the legislation whose purposes are carried out by the Ecclesiastical Commission,

which gives occasion to four; and the Canada Government Bill, which elicits six. The other protests are on a Bill which arose out of 'Stockdale's case' (dcclviii), and another (dccl) of Lord Stanhope on the Opium Trade. Only two protests occur in the year 1841, both on the same occasion and on the same day. The first is a very exhaustive summary against the Corn Laws, and is signed by eleven Peers, led by the Duke of Sussex, who protested for the last time in this document. The other is a vehement attack of Lord Cloncurry on the probable policy of Peel's government in Ireland.

With one exception all the protests of 1842 are directed against the financial policy of Peel, but generally proceed from the Tory party. Four attack his Corn Law policy, three the Income Tax, one the alteration of the Irish spirit duties, two the Tariff Reform. One (dcclxxiii) from Lord Clanricarde attacks an Irish Drainage Bill. The rejection of an extraordinary proposal of Lord Stanhope calls forth his (the first) protest of 1843. The Corn Laws elicit two protests, one from the free-traders (dcclxxvii), the other (dcclxxix) from the protectionists. The Customs Bill of 1843 again rouses Lord Stanhope (dcclxxxii). The Townshend peerage case calls forth another, and the Scotch Benefices Bill, enacted after the disruption, to two more.

The protests of 1844 are on very various topics. The first is a very significant one on the military occupation of Ireland and is signed by nineteen Peers, almost all being English Lords. The second is against the scandalous case of the marriage of Millis, and his trial for bigamy (dcclxxxiv), and proceeds from Lord Campbell. The abortive scheme for remodelling the Ecclesiastical Courts elicits another. Bishop Philpotts enters another against the settlement of the long litigation on Lady Hewley's charity. Two protests are entered on the same day against the Factories Bill, one, it appears, written by Lord Radnor (dcclxxxviii), the other by Lord Brougham, embodying the objections to legislation on the hours of labour. A free trade protest of Lord Monteagle, signed by eight Peers, summarises the arguments in favour of that policy. Another (dccxci) on the Sugar Trade is from the same Peer. There is also a protest of Lord Brougham against

the rejection of a clause in the Lancaster and Carlisle Railway Bill (declxxxvii).

There are nineteen protests in 1845. One is on the Property Tax. Three bear upon the discovery made by Mazzini that the Post Office authorities had tampered with his letters. Six are vehement attacks on the Maynooth grant. Three are on the extension of the principles contained in the Bank Act of 1844 to Scotland. An Irish Tenant Right Bill leads to a protest (decciv) signed by twenty-one (chiefly Irish) Peers against the measure. The Mischievous Offences Bill, occasioned by the wilful destruction of the Portland Vase, elicits a vigorous protest from Lord Brougham (deccvii). Two protests (deccviii, ix) bear on a breach of privilege, and exhibit considerable diversity of opinion. The Field Gardens Bill is attacked (deccx) by Lord Radnor, and the Continuance Bill, exempting Exchequer Bills from the operation of laws against usury, gives occasion to an attack on the usury laws, of which Lord Monteagle avails himself.

The introduction by Lord Dalhousie of a series of resolutions on railway legislation gives occasion for a protest of Lord Radnor in 1846. The chief measure of the Session, the repeal of the Corn Laws, elicits three protests, one from Lord Stanhope (deccxiii), a second signed by fourteen Peers, and a third signed by eighty-eight. The second of these protests was written by Lord Stanhope, the third by the late Lord Derby, then Lord Stanley. The Customs Duties Bill originates another protest of Lord Stanhope, who enters another against the Sugar Duties Bill of Lord John Russell. This is signed by five Peers, a second on the same subject by four. The Scotch and Irish Banking system leads to a protest of Lord Radnor (deccxix), which has some present interest. The last protest of 1846 refers to the Irish Constabulary Act.

In 1847, the Irish Poor Law leads to six protests, one of them (deccxxii) being apparently the composition of Archbishop Whately. The Army Service Bill, limiting the time for which recruits were enlisted, leads to a protest from Lords Londonderry and Cardigan. The Factory Act of this year is made the subject of a protest (deccxxviii). A new order of the House, intended to

facilitate the passage of Railway Bills, is protested against by Lord Redesdale and two others. The clause in the Bill for creating the Bishopric of Manchester, which excludes one Bishop from the Lords, is protested against by seven Lords (dcccxxx), and the changes in the Administration of the Poor Law call forth two more.

In 1848 the Aliens' Removal Bill calls forth a protest from Lord Holland, and the Parliamentary Proceedings Bill, a measure introduced by Lord Stanley, and intended to extend the privilege granted to Railway Bills in the previous year, to all but money Bills, to two protests from Lord Redesdale. The Scotch Registration Bill and the amendment of Scotch Entails Bill, lead to protests from Scotch Peers, and Lord Monteagle entered his dissent from two Irish Bills, one relating to the Poor Law, the other to the Salmon Fisheries.

The Scotch Marriage Law Amendment Bill was protested against in 1849 by Lord Aberdeen. The Irish rate in aid Bill led to three protests, and the abolition of the Navigation laws to three more—one of which (dcccxlvi) is signed by forty-three Peers. It is the composition of the late Lord Derby. The Australian Colonies Bill led to a protest of three Lords in 1850. The transfer of the shrievalty of Westmorland from the family of Lord Thanet to the Crown led to another of Lord Redesdale; the failure of an amendment of the Duke of Richmond in attempting an amendment on the Factory Act of 1847, to another. The abortive attempt of Lord Brougham to obtain a return of the Civil List, and the savings on it, elicits the protest to which allusion has been made above. Three other protests of the year refer to Irish legislation.

In 1851, the Ecclesiastical Titles Bill leads to very different protests, one from Lord Winchilsea (dccccliv) condemning the Bill as insufficient, and two others from various Peers, chiefly Roman Catholics, in which the Bill is branded with intolerance. The only other protest of the year is against the Bill for removing Smithfield Market, signed by five Lords, one of them being an Irish Bishop. The only protest of 1852 is one (dcccgviii) from Lord Clanricarde against the summary extinction of the borough of St. Alban's.

In 1853, Lord St. Leonard's objects to the imminent disfran-

chisement of Maldon. Of the three remaining protests of this year two are the composition of Lord Monteagle, and refer respectively to the increase of the Irish Spirit Duties, and to certain omissions in the Government of India Bill. The third is from Lord Ellenborough, and objects to the remission of the Soap Duties (dcclxi). All the protests of 1854 refer to Irish legislation, to the Irish valuation Act, to a Landlord and Tenant Bill, which failed in the Commons, and to an Act by which the Irish Constabulary were employed in checking illicit distillation (dcclxv).

The remission of stamp duties on newspapers in 1855 leads to a protest of Lord Monteagle; and certain unsuccessful attempts on the part of Lord Brougham to amend the law of actions on promissory notes and bills of exchange to another from that Peer. A third bears upon the passage of the Bill which establishes the limited liability of shareholders in joint stock companies (dcclxviii). In 1856, the Wensleydale peerage led to three protests, and an attempt of the Lords, which failed in the Commons, to pass a Bill enabling the Crown to create a limited number of life peerages, to three more. The Joint Stock Companies Bill of this year led to a further protest, apparently the composition of Lord Overstone, and the Bill for the retirement of the Bishops of London and Durham to two more.

The Divorce Bill of 1857 elicited seven protests. The abolition of Ministers' Money in Ireland led to another. An attempt of Lord Redesdale to make persons, convicted of adultery and thereupon divorced, seek a registrar's office to be re-married, and which failed, leads to another protest. The abolition of the Property Qualification leads in 1858 to a protest from Lord Denman; the concession of a Jewish form of oath to another, signed by eight Lords, and the India Bill of the same year to a protest from Lord Albemarle. There is no protest in 1859.

In 1860, Lord Westmeath protests (dcexc) against the lenity of a Bill relative to offences against the person. Three protests are directed against the Refreshment Houses and Wine Licences Bill. Of three others two are directed against Irish legislation, and are the composition of Lord Monteagle; the first referring

to the relaxation of a disability laid on the Bank of Ireland, the second to a case of urgency, and a third to an Irish Tenure Bill. In 1861 the same Peer objects to the new Savings Bank scheme, and to the Repeal of the Paper Duty, nine other Peers concurring with him. Lord Redesdale (deccxcix) protests against the relaxation of the rules under which the Lords admit evidence, and Lord Campbell to the process by which the seats of St. Alban's and Sudbury were distributed. There are no protests for three years.

In 1865 four Peers protest against what appeared to them an *ex post facto* act of legislation for Ireland. Three other protests of this year refer to the Courts of Justice Bill, and one to a grievance of three Irish Bishops, who complained that the English Convocation had been consulted in relation to a Bill modifying the terms of the oaths taken by the Clergy of England and Ireland, while the Irish Convocation had not been similarly summoned. In 1866 there is one protest, which finds fault with the alteration of the oaths taken by Roman Catholics.

Of the four protests of 1867, one complains of an alteration in the Scotch Law of Hypothek (decccvii), and one on the Reform Bill of that year, which predicts formidable results from that measure. The other two refer to certain alterations made in the Irish Law Courts. There is no protest in 1868. But in 1869 there are six. Five of them refer to the disestablishment of the Irish Church, one of the five (decccxiv) having sixty-one signatures. The other protest is levelled against the decision of the Lords on the Willes peerage case, when a different principle was adopted to that on which the rule of the Devon case in 1831 was founded. In 1870 there are six protests, four against the Irish Land Bill, one against the High Court of Justice Bill, a measure afterwards withdrawn, and one against the Sligo and Cashel disfranchisement Bill. There is one protest in 1871 against the abolition of the Scotch Law relating to mortmain, and one in 1872 against the Ballot Act. Three protests in 1873 and three in 1874 refer to the abolition of the Lords' jurisdiction in Appeals.

## P R O T E S T S.

### I.

MAY 26, 1624.

THE Nation was, at this time, eager to adopt all means for the recovery of the Palatinate on behalf of the King's son-in-law, and both Houses of Parliament fully represented the popular feeling. The House of Commons therefore granted the King three entire subsidies and three fifteenths and tenths. Each subsidy amounted to 2*s.* 8*d.* in the pound on the personal estate of subjects, 5*s.* 4*d.* in the pound on the personal estate of aliens, 4*s.* in the pound on the income of lands and tenements from subjects, 8*s.* from aliens. The first was to be paid on the 20th of June, the second on the 10th of October, and the third on the 10th of March. The fifteenths and tenths again were to be paid on the 10th of July, the 10th of December, and the 10th of May. The House of Commons declares in the preamble to their Act, that it is the greatest aid ever given, and in the shortest time.

The peculiarities of the Act were, that it appointed, in the House of Commons, seven aldermen, and one citizen of London, as the Treasurers of the fund collected; that it bestowed on the House of Commons the right of naming the collectors; that it gave the collectors power of fine or imprisonment in the exercise of their duty; and, in order to secure that the money should be expended for the recovery of the Palatinate only, it appointed ten persons—Lords Carew and Brooke, Viscount Grandison, Lord Chichester, Sir Edward Cecil, Sir Robert Conway (one of the Secretaries of State), Sir Horace Vere, Sir Robert Mansell, Sir John Ogle, and Sir Thomas Button, as a Commission, who should expend the moneys raised by their Writ; five to be a quorum, of whom two must be Privy Councillors. Certain kinds of personal estate are exempted from the assessment, and the Act does not apply to the Universities and Colleges of Oxford and Cambridge, Schools, Hospitals, and other charitable institutions.

The Lords seem to have been surprised at the nomination of the Treasurers by the House of Commons, and at the judicial power conferred on the Collectors, for the Committee to whom the Bill was referred, and whose names are given below, demanded the attendance of the Judges, the Master of the Rolls, and the King's Counsel, on the 25th of May, and put a question as to the points of Judicature in the Bill mentioned. On the next day the Judges gave an unanimous opinion by the Attorney-General, that the privileges of the Higher House are not impeached or blemished, or those of the Lower added to; that the

Judicature is not, in this case, assumed by way of privilege, to beget a precedent, but by way of Act, and thereby takes effect not by the Commons themselves but by the Lords and the King's assent; that the Act proceeded from the King's own proposition; that the words, 'The Lords shall have power by virtue of this Act,' are not privative to any former power of the Lords, and are convenient in the case of a new offence, and for other less important reasons. By the order of the House of Lords the 'Resolution' of the Judges is confirmed and subscribed by them.

It does not appear that the Lords were offended, as has been frequently said, by the fact that the Treasurers were nominated in Parliament. There was some reason for suspecting many about the Court, and it should be remembered that Lord Treasurer Middlesex had just been convicted (May 13), and it seems unanimously, of 'bribery, extortion, oppression, wrongs, and deceits,' as well as embezzlement. Nor was such an appropriation of a tax wholly without precedent. It had been done, for instance, in the first Parliament of Richard II.

The Committee of the Lords, however, makes the following protestation.

Forasmuch as this present act of subsidy from the Temporality, is, in many things, different from the ancient usual form of a subsidy Bill, and because something contained in the said Act may, in time to come, be construed either to lessen the jurisdiction of the one House, or add to the jurisdiction of the other, more than hath been used, or heretofore admitted; therefore the Lords, spiritual and temporal, in the higher House of Parliament, now assembled, do hereby declare and pronounce, and cause this protestation to be entered on record, in the rolls of this Parliament.

That no words, matter or things, in this Act contained, shall hereafter be taken or construed to give or take any jurisdiction, power, privilege, or authority, to or from either of the said Houses of Parliament; but that either of them shall, severally and dividedly, hold, use, and enjoy such and the same liberties, privileges, powers, and jurisdictions, as, heretofore, they, or either of them, respectively had, and those in the same manner, to all intents and purposes, shall hold, use, and enjoy; anything in this Act to the contrary notwithstanding.

George Abbot, Archbishop of Canterbury.

Henry Montagu, Viscount Mandeville, Lord President.

Edward Somerset, Earl of Worcester, Lord Privy Seal.

Henry de Vere, Earl of Oxford, Lord Chamberlain.

Henry Wriothesley, Earl of Southampton.

Richard Neale, Bishop of Durham.

Thomas Moreton, Bishop of Lichfield and Coventry.  
 Arthur Lake, Bishop of Bath and Wells.  
 Emanuel Scrope, Lord Scrope.  
 Edward Sutton, Lord Dudley.  
 Thomas Wentworth, Lord Wentworth.  
 Edmund Sheffield, Lord Sheffield.  
 Henry Danvers, Lord Danvers.  
 Francis Russell, Lord Russell of Thornhaugh.  
 William Fiennes, Lord Say.  
 John Holles, Lord Houghton.  
 Edward Montagu, Lord Montague.

## II.

MARCH 18, 1641.

The memorial of the twelve Peers presented to Charles I at York in the summer of 1640 is not indeed a protest, strictly speaking, though it was delivered to the King on the part of those Peers who subscribed it, with the same motive as that which originated the custom, that of speech on behalf of the hereditary advisers of the House, when the action of the King is likely to involve them in the responsibility of the consequences. The Memorial was adopted by the Lords as 'an Act of the House.' It is therefore printed.

Most gracious Sovereign,

The sense of that duty and service, which we owe unto your sacred Majesty, and our earnest affection to the good and welfare of this your realm of England, have moved us, in all humility, to beseech your Royal Majesty, to give us leave to offer unto your most princely wisdom, the apprehension which we, and other your faithful subjects, have conceived of the great distempers and dangers now threatening the Church, the State, and your Royal person, and the fittest means by which they may be prevented.

The evils and dangers whereof your Majesty may be pleased to take notice, are these :

1. That your sacred Majesty is exposed to hazard and danger, in the present expedition against the Scots army; and, by the occasion of the war, your revenue is much wasted, your subjects burthened with Coat and Conduct Money, billetting of soldiers, and other military charges; and divers rapines and disorders committed in several parts in this your Realm, by the soldiers raised for that service; and your whole kingdom become full of fear and discontent.

2. The sundry innovations, in matters of religion ; the Oath and Canons lately imposed upon the clergy, and other your Majesty's subjects.

3. The great increase of Popery, and employing of Popish recusants, and others ill-affected to the religion by law established, in places of power and trust ; and especially commanding of men and arms, both in the field and divers counties in this Realm ; whereas, by the laws, they are not permitted to have arms even in their own houses.

4. The great mischief which may fall upon this kingdom, if the intentions, which have been credibly reported, of bringing in of Irish forces shall take effect.

5. The urging of Ship-Money, and prosecution of some Sheriffs in the Star-Chamber for not levying of it.

6. The heavy charges of merchandise, to the discouragement of trade ; the multitude of monopolies, and other patents, whereby the commodities and manufactures of the kingdom are much burthened, to the great and universal grievance of your people.

7. The great grief of your subjects, by the intermission of Parliaments, in the late and former dissolving of such as have been called ; with the hopeful effects which, otherwise, they might have procured.

For a remedy whereof, and prevention of the danger that may ensue to your Royal person, and to the whole State, we do, in all humility and faithfulness, beseech your most excellent Majesty, that you would be pleased to summon a Parliament within some short and convenient time ; whereby the cause of these, and other great grievances, which your poor petitioners now lie under, may be taken away ; and the authors and counsellors of them, may be there brought to such legal trial, and condign punishment, as the nature of the offence does require ; and that the present war may be composed, by your Majesty's wisdom, without bloodshed, in such manner as may conduce to the honour and safety of your Majesty's person, the content of your people, and continuance of both your kingdoms against the common enemy of the Reformed religion.

George Manners, Earl of Rutland.  
Francis Russell, Earl of Bedford.  
William Seymour, Marquis of Hertford.

Robert Devereux, Earl of **Essex**.  
 David Cecil, Earl of **Exeter**.  
 Robert Rich, Earl of **Warwick**.  
 Oliver St. John, Earl of **Bolingbroke**.  
 Edmund Sheffield, Earl of **Mulgrave**.  
 William Fiennes, Viscount **Say and Sele**.  
 Edward Montagu, Lord **Kimbolton**.  
 Robert Greville, Lord **Brooke**.  
 Edward Howard, Lord **Howard of Escrick**.

## III.

SEPTEMBER 9, 1641.

On the 29th of July, the House of Lords rejected a Bill which had been sent them from the Commons entitled, ‘An Act for the securing of the True Religion, the safety and honour of his Majesty’s person, the just rights of the Subject, and the better discovery and punishment of Popish offenders.’ On the 8th of September the Commons desire a conference ‘by a Committee of both Houses, presently, if it may stand with the convenience of this House, touching the restraint of Superstition and Innovation in the Church,’ and the Lords assent; appointing the Lord Privy Seal, the Earl of Warwick, the Bishop of Lincoln, Lord Wharton, and Lord Kimbolton, to report on this and on other conferences. When they met, the order was produced from the House of Commons in which the Lords were invited to concur, and by which all innovations, &c. were to be prohibited, or to be taken away, as the case might be. The Lords agreed to the substance of some among these, and put off the discussion of the rest till the next day. When the debate was resumed, it was resolved after a division that ‘the House will vote the printing and publishing of the order made the 16th of January, 1640(1) concerning Divine Service, before this House desires a conference with the House of Commons concerning that particular.’ The order ran as follows: ‘That the Divine Service be performed as it is appointed by the Acts of Parliament of this Realm, and that all such as disturb that order shall be severely punished according to law; and that the parsons, vicars and curates, in several parishes, shall forbear to introduce any rites and ceremonies which may give offence, otherwise than those which are established by the laws of the land.’ On this the following Lords protest. This is the first formal protest, with Reasons, in the Journals.

After the debate about the printing and publishing of the order of the 16th of January last, viz. That the Divine Service be performed as it is appointed by the Acts of Parliament of this Realm, and that all such as shall disturb that wholesome order, shall be severely punished according to law: and that all parsons, vicars

and curates, in their several parishes, shall forbear to introduce any rites or ceremonies, otherwise than those which are established by the laws of this land ; it being put to the question, whether the Lords would order that it should be voted, that the said order of the 16th of January should be printed and published before a conference desired with the House of Commons about it ; we whose names are underwritten did disassent, and having, before the putting of the question, demanded our right of protestation, did accordingly make our protestation : That we held it fit and necessary to have the consent of the House of Commons, in those things which concern so nearly the quiet and government of the Church : and therefore we desired to have a conference with the House of Commons, before any conclusive order were printed or published herein, especially the House of Commons having but lately brought to us, and desired the consent of our House unto certain votes of theirs, against innovations in or about the worship of God lately practised in this kingdom without warrant of law ; and therefore to acquit ourselves of the dangers and inconveniences that might arise by the printing and publishing of the said order of the 16th of January, as binding to the whole kingdom, without desiring the consent of the House of Commons ; we do protest our disassents to this vote, and do thus enter it as aforesaid.

William Russell, Earl of Bedford.  
 Robert Rich, Earl of Warwick.  
 John Holles, Earl of Clare.  
 Mountjoy Blount, Earl of Newport.  
 Philip Wharton, Lord Wharton.  
 Edward Montagu, Lord Kimbolton.

## IV.

DECEMBER 24, 1641.

On Saturday, the 24th of December, the House of Commons made a declaration on the safety of the King and Kingdom, and dwelt in particular on the appointment of Colonel Lunsford to the command of the Tower, alleging that the nomination has given the greatest alarm to merchants and others, that it is part of the design of overawing the city of London and the Parliament, and that it is intended to bring about ‘a bloody change of religion, to the apparent ruin of the whole kingdom.’ The declaration complains that ‘encouragement is given to the malignant party here,’ and ‘that they receive advantage by the delays and interrup-

tions which we have received in the House of Peers, as we conceive by the great number of Bishops and Papists notoriously disaffected to the common good.' It was moved on the receipt of this Declaration that the House be adjourned and the debate taken into consideration on Monday, while others desired that the business should be debated at once. The majority decided to put it off till Monday, when the subject does not appear to have been revived. The minority protests as follows.

In respect the conference brought up and reported from the House of Commons doth, as is thereby declared, concern the instant good and safety of the King and kingdoms, I do protest against the deferring the debate thereof until Monday, to the end to discharge myself of any ill consequence that may happen thereby.

Algernon Percy, Earl of Northumberland, Lord Admiral.  
Aubrey de Vere, Earl of Oxford, Lord Chamberlain.  
Philip Herbert, Earl of Pembroke.  
William Russell, Earl of Bedford.  
Robert Rich, Earl of Warwick.  
Oliver St. John, Earl of Bolingbroke.  
Mountjoy Blount, Earl of Newport.  
William Fiennes, Viscount Say and Sele.  
James Howard, Earl of Suffolk.  
James Hay, Earl of Carlisle.  
Henry Rich, Earl of Holland.  
John Holles, Earl of Clare.  
Henry Gray, Earl of Stamford.  
Philip Wharton, Lord Wharton.  
Oliver St. John, Lord St. John.  
Henry Spencer, Lord Spencer.  
Dudley North, Lord North.  
Edward Montagu, Lord Kimbolton.  
Robert Greville, Lord Brooke.  
William Grey, Lord Grey de Warke.  
John Roberts, Lord Robartes.  
Edward Howard, Lord Howard of Escrick.

## V.

DECEMBER 30, 1641.

The members of both Houses of Parliament complain of the disturbances about the Houses, and the hindrance put upon the meetings of Parliament on the 27th and 28th of December. On the former of these days, a Committee, of which the Archbishop of York was a member, reported on the heads of a conference with the House of Commons, to the effect that they dislike the assembling of people in such companies and

disorders, that they petition the King for a guard, and that the conference with the Lower House should be held with all speed. On the 28th of December a Committee, again containing the Archbishop of York, is appointed to present the petition to the King, and a message requesting a conference was sent to the Commons. On the 29th the Commons generally agree to the petition. But it appears that the Bishops were deterred from being present, and with reason, for the Archbishop (John Williams) was nearly murdered by the mob on going to the Lords, and the rest of the Bench escaped from the House 'by secret and far-fetched passages.' On the same day (Dec. 30), at an afternoon sitting, the twelve Bishops were impeached for high treason, the ground of this action being the last clause of their protest. It was on the 4th of January following that the King attempted to arrest the five members.

That whereas the Petitioners are called up by several and respective writs, and under great penalties, to attend in Parliament, and have a clear and indubitable right to vote in Bills and other matters whatsoever debatable in Parliament, by the ancient customs, laws, and statutes of this Realm; and ought to be protected by your Majesty, quietly to attend and prosecute that great service;

They humbly remonstrate and protest before God, your Majesty, and the noble Lords and Peers now assembled in Parliament, that, as they have an indubitable right to sit and vote in the House of Lords, so are they (if they may be protected from force and violence), most ready and willing to perform their duties accordingly; and that they do abominate all actions or opinions tending to Popery, and the maintenance thereof; as also all propension and inclination to any malignant party, or any other side or party whatsoever, to the which their own reasons and consciences shall not move them to adhere.

But whereas they have been, at several times, violently menaced, affronted, and assaulted by multitudes of people in their coming to perform their service in that honourable House, and lately chased away, and put in danger of their lives, and can find no redress or protection, upon sundry complaints made to both Houses, in these particulars;

They likewise humbly protest, before your Majesty and the noble House of Peers, that, saving unto themselves all the rights and interests of sitting and voting in that House at other times, they dare not sit or vote in the House of Peers, until your Majesty shall

further secure them from all affronts, indignities, and dangers in the premises.

Lastly, whereas their fears are not built upon phantasies and conceits, but upon such grounds and objects as may well terrify men of good resolutions and much constancy, they do, in all duty and humility, protest, before your Majesty and the Peers of that most honourable House of Parliament, against all laws, orders, votes, resolutions, and determinations, as, in themselves, null, and of none effect, which, in their absence, since the 27th of this instant December, 1641, have already passed; as likewise against all such as shall hereafter pass in that most honourable House, during the time of this their forced and violent absence from the said most honourable House: not denying, but, if their absenting of themselves were wilful and voluntary, that most noble House might proceed in all these premises, their absence, or this their protestation, notwithstanding: and humbly beseeching your most excellent Majesty to command the Clerk of the House of Peers to enter this their petition and protestation amongst his records, they will ever pray God to bless and preserve, &c.

John Williams, Archbishop of York.  
 Thomas Moreton, Bishop of Durham.  
 Joseph Hall, Bishop of Norwich.  
 Godfrey Goodman, Bishop of Gloucester.  
 Robert Wright, Bishop of Lichfield and Coventry.  
 John Owen, Bishop of St. Asaph.  
 William Pierce, Bishop of Bath and Wells.  
 Robert Skinner, Bishop of Oxford.  
 George Cook, Bishop of Hereford.  
 Matthew Wren, Bishop of Ely.  
 Morgan Owen, Bishop of Llandaff.

## VI.

JANUARY 24, 1642.

The King had sent a message to both Houses of Parliament on the 20th of January, desiring them to deal with all public grievances in a general manner, and to 'digest and compose them into one entire body,' and promising to do his best to bring about that 'the present Distractions' 'end in happy and blessed accommodation.' To this the Lords make answer by a message of thanks, in which they desire the Commons to concur. The Commons agree, if a clause be added, 'And to the further intent that they may be enabled with security to discharge their

duties herein, they humbly beseech your sacred Majesty to raise up to them a sure ground of safety and confidence, by putting the Tower and other principal forts of this kingdom, and the whole militia thereof, into the hands of such persons as your Parliament may confide in, and as shall be recommended unto your Majesty by both Houses of Parliament; that all fears and jealousies being laid aside, they may with all cheerfulness proceed to such resolutions as they hope will lay a sure foundation of honour, greatness, and glory to your Majesty and your royal posterity, and of happiness and prosperity unto your subjects throughout all your dominions.' This being a demand for the concessions afterwards embodied in the Militia Bill, which led to a final rupture between the King and Parliament, the Lords rejected the addition, whereon the following protest is put on the Journals.

Whereas the desire brought from the House of Commons, concerning the forts and militia of the Kingdom, concerneth much the safety of the Kingdom, the service of the King, the general peace and quiet of this land, and is (as I conceive) absolutely necessary to the settling of the present distempers, and tendeth to the furtherance of trade, now much obstructed and decayed, as hath been represented by several petitions from the city of London, and sundry other countries; I protest against the vote of rejecting of that desire of the Commons, and do testify my dissent, to discharge myself from all the mischiefs and ill consequences that may thereupon follow.

Aubrey de Vere, Earl of Oxford, Lord Chamberlain.  
 Philip Herbert, Earl of Pembroke.  
 Henry Rich, Earl of Holland.  
 Henry Gray, Earl of Stamford.  
 William Fiennes, Viscount Say and Sele.  
 William Russell, Earl of Bedford.  
 Robert Sydney, Earl of Leicester.  
 John Holles, Earl of Clare.  
 Theophilus Clinton, Earl of Lincoln.  
 William Cecil, Earl of Salisbury.  
 John Mordaunt, Earl of Peterborough.  
 John Tufton, Earl of Thanet.  
 Charles Howard, Earl of Nottingham.  
 Edward Conway, Viscount Conway.  
 William Paget, Lord Paget.  
 Edward Montagu, Lord Kimbolton.  
 Robert Greville, Lord Brooke.  
 John Roberts, Lord Robartes.  
 Dudley North, Lord North.  
 Philip Wharton, Lord Wharton.  
 Oliver St. John, Lord St. John.

Henry Spencer, Lord Spencer.  
 Basil Feilding, Lord Newnham Paddox.  
 Francis Willoughby, Lord Willoughby of Parham.  
 Thomas Bruce, Lord Bruce of Whorlton.  
 Francis Lennard, Lord Dacre.  
 Edward Howard, Lord Howard of Escrick.  
 William Grey, Lord Grey de Warke.  
 George Bruges, Lord Chandos.  
 John Carey, Lord Hunsdon.

## VII.

JANUARY 26, 1642.

The Duke of Richmond (James Stuart, Duke of Lennox in Scotland, and a relative of the King) had said, on a debate held upon a conference with the House of Commons and on the Militia question, when after long debate some of the Lords wished to adjourn, ‘Let us put the question, whether we shall adjourn for six months.’ The House took exception at the words, and the Duke explained himself that he did not speak these words positively, but meant that the House might adjourn as well for six months as for no time appointed. On this, after long debate, it was decided that the matter should be passed over, on the Duke’s apology being made.

But the following protest was put on the Journals.

In respect of the words spoken by the Duke of Richmond, which were these, ‘Let us put the question whether we shall adjourn for six months’ tended much to the prejudice of the King and Kingdom, I do protest against the vote, as not of sufficient punishment for words of that dangerous consequence.

Algernon Percy, Earl of Northumberland, Lord Admiral.  
 Aubrey de Vere, Earl of Oxford, Lord Chamberlain.  
 Philip Herbert, Earl of Pembroke.  
 James Howard, Earl of Suffolk.  
 Theophilus Clinton, Earl of Lincoln.  
 Robert Sydney, Earl of Leicester.  
 Robert Rich, Earl of Warwick.  
 Henry Rich, Earl of Holland.  
 Oliver St. John, Earl of Bolingbroke.  
 Henry Gray, Earl of Stamford.  
 Edward Conway, Viscount Conway.  
 Philip Wharton, Lord Wharton.  
 William Paget, Lord Paget.  
 John Carey, Lord Hunsdon.  
 George Bruges, Lord Chandos.  
 Oliver St. John, Lord St. John.  
 Henry Spencer, Lord Spencer.

Edward Montagu, Lord Kimbolton.  
 Robert Greville, Lord Brooke.  
 William Grey, Lord Grey de Warke.  
 John Roberts, Lord Robertes.  
 Edward Howard, Lord Howard of Escrick.

## VIII.

MARCH 15, 1642.

Mr. Fiennes brought a message from the House of Commons on this day requesting the assent of the Lords to five propositions. I. A declaration of the danger in which the kingdom was, which was agreed to, six peers protesting. II. That the King had refused his assent for remodelling the militia. III. That the people are bound by the ordinance of the militia, though it had not received the royal assent. IV. That these shall be the heads of a declaration. V. That deputy-lieutenants should execute the commands of both Houses. To the last two of these there were two dissentients, the Earl of Southampton and Lord Dunsmore. On the third question, it was moved that the judges should be heard in point of law to the third question, and resolved in the negative. Hence the following peers protest.

Whereas before the putting of this question, viz. That in this case of extreme danger, and of his Majesty's refusal, the ordinance agreed upon by both Houses for the militia doth oblige the people, and ought to be obeyed by the fundamental laws of this Kingdom (there was a question first put, whether the Judges should be heard in point of law contained in this question), which question of hearing the Judges was carried negatively; we, whose names are underwritten, do enter this our protestation and dissent from that question, viz. That in this case of extreme danger and of his Majesty's refusal, the ordinance agreed upon by both Houses for the militia doth oblige the people, and ought to be obeyed by the fundamental laws of this Kingdom.

Henry Bourchier, Earl of Bath.  
 Thomas Wriothesly, Earl of Southampton.  
 Thomas Wentworth, Earl of Cleveland.  
 Francis Leigh, Lord Dunsmore.  
 John Lovelace, Lord Lovelace.  
 Arthur Capel, Lord Capel.

## IX.

DECEMBER 20, 1642.

On the 19th of December, the House of Lords had agreed after a division, ‘That a Committee should be appointed to nominate some of the delinquents that are impeached by the House of Commons to be presented to the King to be left to the trial of Parliament, and for the leaving out of the others which are impeached, for this time.’ The occasion of this resolution was a report from a Committee of the House, which had been appointed to consider the propositions to be made to the King, and which had suggested that those persons only who had been impeached before the 1st of January, should be named to be proceeded against in Parliament; adding however to the list the name of Lord Digby, who had been impeached since that date; and that certain parties should be removed from the court. The dissentients then make the following protest.

We, whose names are subscribed, do conceive that the demanding by this House of some to be left to justice, and leaving out of others, who are under the like impeachment of high treason, and have been, by force of arms, protected from being brought to a trial in the highest Court of Judicature, is an example of very ill consequence: because we conceive that it is not proper for this House to move the House of Commons, in the stopping of their proceedings upon impeachments; and that it doth not only give encouragement to a King to attempt the like stoppage of justice by force, and, from this precedent, to stand upon the protecting of persons impeached; but to subjects also, who may be induced to undertake anything in hopes of impunity, even from the desires of this House; which hath not demanded any one of those to be left to trial, who, since his Majesty’s going to York, have been impeached of high treason, for actual levying war against the King and Kingdom.

Upon these, amongst other reasons, we have demanded our right of protestation; and do now accordingly enter it, to clear ourselves from any inconveniences that may follow from these votes; which are, in our opinion, very prejudicial to the privileges of Parliament and the liberty of the subject.

Robert Rich, Earl of Warwick.  
Oliver St. John, Earl of Bolingbroke.  
Henry Mordaunt, Earl of Peterborough.  
Edward Montagu, Earl of Manchester.  
William Fiennes, Viscount Say and Sele.  
Philip Wharton, Lord Wharton.

Francis Willoughby, Lord Willoughby of Parham.  
 Robert Greville, Lord Brooke.  
 William Grey, Lord Grey de Warke.

## X.

MAY 8, 1646.

The Houses of Parliament were informed on the 7th of May that the King had resolved to throw himself into the hands of the Scotch army then before Newark. The last information as to the King's retreat having been a message from him dated on the 15th of April, and in the Isle of Scilly. By a letter from Lord Lothian, dated the 5th of May, they were informed that the King had that morning joined the Scotch army. In this crisis a conference of the two Houses was demanded at the instance of the Commons, and the Lords were informed that the Commons had passed two votes—one to the effect that the Scotch Commissioners with the army before Newark, and their general there, should be desired that the person of the King might be disposed of to such a place within the kingdom as the two Houses of Parliament should appoint, and the other that the place should be Warwick Castle. The Lords put off their debate till the next day, the 8th of May, and rejected both proposals. The dissentients therefore make the following protest.

We, whose names are underwritten, having, before the putting of the aforesaid question, demanded our right of protestation, if the question was carried in the negative, as it was; and finding, by letters of the 6th instant, from the Commissioners of the Parliament of England, near Newark, this day read in the House of Peers, that strict guards were kept by the Scots Army about the house where the King then was, and none suffered access to his person without their permission, we conceive this to be a matter of so high concern, both to the Parliament and Kingdom (that in such a case the Houses of Parliament should not desire that the person of the King of England may be disposed of to such a place, within this kingdom, as the Houses should appoint), that, to clear ourselves from the ill consequences that may ensue thereupon, we have thought fit to enter this our dissent and protestation against it, which we do accordingly.

James Cranfield, Earl of Middlesex.  
 Algernon Percy, Earl of Northumberland.  
 Charles Howard, Earl of Nottingham.  
 Philip Wharton, Lord Wharton.  
 Henry Grey, Earl of Kent.  
 William Cecil, Earl of Salisbury.

William Grey, Lord **Grey de Warke**.  
 Philip Herbert, Earl of **Pembroke and Montgomery**.  
 Basil Feilding, Earl of **Denbigh**.  
 William Fiennes, Viscount **Say and Sele**.  
 Edward Howard, Lord **Howard of Escrick**.

## XI.

MARCH 4, 1647.

The House of Lords had taken into consideration on this day the acceptance or rejection of the ordinance for continuing the payment of the assessment for the army, under the command of Fairfax, and they negatived the question. The purpose of the Lords, in which they had the concurrence of a majority of the Commons, was to disband the army, and so to dissociate the Government from the influence of the Parliamentary generals. Connected with this plan was the famous Self-denying Ordinance of the House of Commons, which was supported for such very different ends by two parties in the legislature. The purposes of Parliament were frustrated by the letter of Fairfax, embodying the resolutions of the officers in a council of war held on the 29th of May, 1647, at Bury.

The following protest was entered in relation to the rejection of the ordinance.

Their Lordships being sensible of the great service done by the army, and holding it just and honourable that the officers and soldiers there should have satisfaction before their disbanding; and being very desirous the country should have allowance for their free quarter, which the army was necessitated to take for want of their pay; as also that the kingdom might be eased as much as may be by the discharging of all unnecessary forces, did, for these ends, desire that the said ordinance might have been passed, not knowing any other or better means of raising money speedily for the said purposes: therefore to clear themselves from the inconveniency which may arise by the not passing thereof, their Lordships have entered this their protestation.

Algernon Percy, Earl of **Northumberland**.  
 Henry Grey, Earl of **Kent**.  
 Charles Howard, Earl of **Nottingham**.  
 William Cecil, Earl of **Salisbury**.  
 William Fiennes, Viscount **Say and Sele**.  
 Charles West, Lord **Delawarr**.  
 Dudley North, Lord **North**.  
 William Grey, Lord **Grey de Warke**.

Philip Wharton, Lord Wharton.  
Edward Howard, Lord Howard of Escrick.

## XII.

MAY 21, 1647.

A letter written by Mr. Ashburnham to the King from the Hague, ‘in figures,’ was intercepted at Holdenby and deciphered. It assured the King that if peace be made between Spain and the Netherlands, an army would be certainly landed in England for his relief. It further counsels him to make no concessions, nor to part with the Church lands, else there can be no hope to restore him. The question was put whether this letter of the Commissioners, with the examinations and the deciphering, should be communicated to the House of Commons, and it was settled in the negative. It appears that afterwards the letter of the Commissioners, the examinations, and the original letter were sent to the Commons, and that the House of Commons took no notice of them.

In consideration that this Letter, being deciphered, importeth matters of such high consequence; and, by examination, appears to have been sent from Mr. Ashburnham to the King, who hath been much employed in the King’s designs against the Parliament, they conceived it fit to be communicated to the House of Commons for the good and safety of the whole Kingdom; and that they may be acquitted from any inconveniency that may arise by the not sending of it down to the House of Commons, they have accordingly entered this their protestation.

Basil Feilding, Earl of Denbigh.  
William Fiennes, Viscount Say and Sele.  
Philip Wharton, Lord Wharton.  
William Grey, Lord Grey de Warke.  
Charles West, Lord Delawarr.

## XIII.

JUNE 11, 1647.

Lord Hunsdon brought an ordinance to the House of Lords for remodelling the army, from the Committee of both Houses which was sitting at Derby House, to the effect that powers should be given to this Committee to consult and advise as to the ways and means which may be in their judgment necessary for the safety and defence of the Kingdom, Parliament, and City, with power to raise horse and foot for that purpose, &c. When the ordinance was read a third time, a division seems to have been taken, and the following protest is entered.

These Lords following, before the putting the aforesaid question, desired leave to enter their dissent and protestation, if the question was carried in the affirmative, apprehending lest this might be an occasion to cast the kingdom into a new war; which was granted, and accordingly these entered their dissent and protestation.

Basil Feilding, Earl of Denbigh.  
 Edmund Sheffield, Earl of Mulgrave.  
 William Fiennes, Viscount Say and Sele.  
 Charles West, Lord Delawarr.  
 William Grey, Lord Grey de Warke.

## XIV.

DECEMBER 13, 1660.

It appears from the Journals of the House of Commons that on the 20th of July, 1653, a petition was presented to Cromwell's first Parliament from the Countess of Stirling and others, complaining of a Mr. Levingston and his wife, William Hinson and others, that they had by force, fraud, and an undue pretence of right and law attempted to take away the estate of Lady Mary Powell, late wife of Sir Edward Powell. On the 22nd of August a Committee of the House report that they had sent for Levington and Hinson, and offered them liberty to take exceptions against the witnesses, &c. That therefore they bade Levington and Hinson present their deeds, and that they agreed to do so on the 11th of August. That Levington after having promised to do so, failed to keep his word, for that he appeared with a Mr. Powell, and though 'affectionately pressed' to do so, that he refused to produce the deeds, answering that the like was never yet desired by men, and further that when 'any claims Title by their Evidences, they are not bound to show them to any man living without consent.' The Committee therefore declares itself at a stand, and unable to proceed till the pleasure of Parliament be known. On this the Parliament orders that Mr. Levington be required by the said Committee to bring unto the said Committee the deed or deeds for leading the uses of the fine, pretended to be acknowledged by the Lady Powell, to be seen and perused by the Committee only. No further reference to the case is to be found in the Journals of the Commons during the Protectorate.

At the Restoration an attempt was made to insert a proviso into the Bill for general pardon and oblivion, that it should not extend to pardon the undue obtaining of any deed or fine of Dame Mary Powell; but the proviso was rejected. After this rebuff, the complainants, now represented by the Earl of Stirling, whose mother was the daughter of Sir Peter Vanlore, one of the heirs of Lady Mary Powell, attempted to obtain a reversal of the fines levied. The Lords proceeded in the business with great care, heard Counsel on behalf of both parties, and on the question being raised as to the case being covered by the Act of

Indemnity, referred this, as well as the question of law, on the 24th of November, 1660, to the Judges. The Chief Justice of the King's Bench on this delivered it as his opinion, as that also of the other Judges, 'that they do not find by any record or precedent in their law books, of any fine that hath been perfected, that hath been vacated for fraud or force, in Parliament or any other place, and that the Act of Oblivion pardons all crimes, but the interest of the parties stands good and valid as before the Act was made.' Upon this after long debate, it was affirmed that the fine had been obtained by force, and on the 26th of November the plaintiff was allowed leave to bring in a Bill. The Bill was read a third time, and passed on Thursday the 13th of December, when the following protest was recorded.

That fines are the foundations of the assurances of the realm, upon which so many titles do depend, and therefore ought not to be shaken; nor hath there any precedent occurred to us, wherein any fines have been vacated by judgment, or Act of Parliament, or otherwise, without consent of the parties; the eye of the law looking upon fines as things always transacted with consent, and with that reverence, that no averment whatsoever shall be good against them when they are perfected; and farther, we conceive, that by a future law to vacate assurances, which are good by the standing law, is unreasonable and of a dangerous consequence, especially in this case, where Skinner and Chute, purchasers of a considerable part of the lands comprised in the said fines, have petitioned, and yet have not been heard upon the merits of their case, which is contrary, as we conceive, to the statute of 28 Edw. III, chap. iii., which saith, No man shall be put out of his land or tenement, nor disherited, without being brought to answer by due process of law.

Edward Hyde<sup>1</sup>, Lord Hyde, Chancellor.  
 Charles Stuart, Duke of Richmond and Lennox.  
 George Monk, Duke of Albemarle.  
 James Butler, Earl of Brecknock (Marquis of Ormond).  
 Francis Browne, Viscount Mountagu.  
 Edward Montagu, Earl of Manchester.  
 James Howard, Earl of Suffolk.  
 Thomas Howard, Earl of Berkshire.  
 Jerome Weston, Earl of Portland.  
 George Goring, Earl of Norwich.  
 William Fiennes, Viscount Say and Sele.  
 William Sandys, Lord Sandys.  
 William Howard, Viscount Stafford.

<sup>1</sup> For Clarendon's account of this and similar transactions see the Continuation of his Life, vol. ii. ed. 1827, p. 152 sqq.

Francis Lennard, Lord Dacre.  
 Edward Howard, Lord Howard of Escrick.  
 Thomas Coventry, Lord Coventry.  
 William Petre, Lord Petre.  
 Arthur Capel, Lord Capel.  
 Philip Wharton, Lord Wharton.  
 William Grey, Lord Grey de Warke.  
 Thomas Culpeper, Lord Culpeper.  
 Robert Sutton, Lord Lexington.  
 John Roberts, Lord Robartes.  
 Francis Willoughby, Lord Willoughby of Parham.  
 Christopher Hatton, Lord Hatton.  
 Thomas Brudenell, Lord Brudenell.

## XV.

JULY 17, 1661.

The Bill passed on the 13th of December, 1660, by the House of Lords, dropped in the Lower House, perhaps because there was not sufficient time to take evidence on the subject, as Parliament was dissolved on the 29th of December. A second Parliament, the Long or Pensionary Parliament of Charles II, was called for the 8th of May, and the Bill to vacate the fines levied on the estate of Lady Mary Powell was again brought in; and the case was reheard. Certain alterations were made in the Bill while it was in Committee, and it finally passed the Lords on the 17th of July. The Bill was carried to the Commons, and the same careful investigation into the facts seems to have been given to the case in the Lower House. The Bill finally passed, after two divisions, on the 19th of January, 1662. The following protest was entered on the Journals of the Lords on the occasion of the third reading.

Whereas before the question was put for passing an Act for making void divers fines unduly procured to be levied by Sir Edward Powell, Knt. and Bart. and Dame Mary his wife, leave was desired for entering protestations of divers Lords, in case the vote should be carried for passing the said Bill; we, whose names are underwritten, do protest against the said Bill for these reasons following:—

1st, That fines are the foundations upon which most titles of this realm do depend, and therefore ought not to be shaken, for the great inconvenience that is likely to follow thereupon.

2ndly, Such proceeding is contrary to the statute of 25 Edw. I now in force, which saith, Forasmuch as fines levied in our court ought and do make an end of all matters; and therefore principally are called fines.

3rdly, And to another statute made in the fifth year of King Edward III where it is enacted, That no man shall be forejudged of lands or tenements, goods or chattels, contrary to the term of the great charter.

4thly, And to another statute made in the 28th of Edw. III where it is enacted, That no man, of what estate or condition that he be, shall be put out of land or tenement, nor disherited, without being brought in to answer by due process of law.

5thly, This proceeding by Bill, as we conceive, is contrary to a statute made in the fourth year of King Henry IV, wherein it is declared, That in pleas real and personal, after judgment given in the courts of our Lord the King, the parties be made to come in upon grievous pains, sometimes before the King himself, sometimes before the King's Council, and sometimes to the Parliament, to answer thereof anew, to the great impoverishing of the parties, and in the subversion of the common law; it is ordained, that after judgment given in the courts of our Lord the King, the parties and their heirs shall be thereof in peace until the judgment be undone by attaint or by error, if there be errors, as hath been used by the laws in the times of the King's progenitors.

6thly, The proceedings upon this Bill have been, as we conceive, directly against the statutes aforesaid, by calling persons to answer of judgments anew, given in the Common Pleas, and vacating the same without either attaint or error, and calling persons to answer without the due and ancient process of law, and forejudging the tenants of the lands in question, without ever hearing of them.

7thly, For that there hath not occurred to us one precedent wherein any fine hath been vacated by Act of Parliament without consent of parties, the law looking upon fines as always transacted by consent, and with that reverence, that neither lunacy, idiotism, nor any other averment whatsoever shall be admitted against fines when perfected.

8thly, We conceive, to vacate assurances by a future law, good by the present law, is unreasonable and of dangerous consequence, both in respect of what such a precedent may produce upon the like pretences, as also rendering men's minds so doubtful, that not only the rude and ignorant, but the learned, may be at a loss how to make or receive a good title.

9thly, For that it is averred in the said Bill, that all the Lady

Powell's servants were removed; whereas it appeared by depositions in Chancery, that Antonia Christiana, one who had lived with the Lady Powell many years, was not removed.

10thly, That Dr. Goddard a Physician, and Foucaut an Apothecary, examined in the said cause, did testify they saw no fear in, or force upon, the Lady Powell; and had there been any, we conceive it impossible for a woman to hide the passion of fear from a Physician, which is not easily dissembled from a vulgar eye; and Foucaut the Apothecary deposed, that he was twice a day with the said Lady Powell for one month together immediately preceding her death.

John Roberts, Lord Robartes.  
 George Monk, Duke of Albemarle.  
 James Butler, Earl of Brecknock (Marquis of Ormond).  
 Jerome Weston, Earl of Portland.  
 Baptist Noel, Viscount Campden.  
 Francis Browne, Viscount Mountagu.  
 William Howard, Viscount Stafford.  
 Christopher Hatton, Lord Hatton.  
 William Petre, Lord Petre.  
 Francis Willoughby, Lord Willoughby of Parham.

## XVI.

DECEMBER 17, 1661.

By the Act for regulating Corporations, all members of Corporations were required to take the two oaths; that it is not lawful, on any pretence whatever, to take up arms against the King, and that which renounces the Solemn League and Covenant. The Bill appears to have been debated at length on some particulars, and to have led to disagreements with the House of Commons on amendments introduced, but not finally insisted on by the Lords.

The following protest was made.

1. That the amendments to the Bill touching the Corporations, he conceives, are against the privileges granted by the Great Charter in the 9th and 29th chapters by many several Acts confirmed.

2. That the power herein granted is against judicial trials, which proceed by oath.

Oliver St. John, Earl of Bolingbroke.

The objection seems to be taken to the clause in the Act which gives

power to the Commissioners to expel any persons from Corporations at their pleasure, even though they have taken the oaths, if they deem it expedient for the public safety.

## XVII.

FEBRUARY 6, 1662.

The Earl of Derby had petitioned the House for leave to bring in a Bill for making void certain conveyances of his which had been executed on the manors of Hope, Mold, and Hawarden, and which he alleged had been obtained by force and fraud. A Bill based on these allegations was brought into the House of Lords on the 13th of June 1660. The manors of Hope and Mold had been purchased by Sir John Trevor, Colonel Twistleton, and Captain Ellis, that of Hawarden by Serjeant Glynne. The Committee of the Lords reported (July 14) on the facts of the case, said that it appeared to them that force and fraud were employed in gaining the fine, and recommended that a Bill be passed to restore the Earl of Derby, on payment of the purchase money with interest. It is said in the report, that the three manors were worth £30,000, that they were sold for £12,000, and that the Earl had only £1700 of the purchase money. The Bill passed on the 29th of August, and was sent to the House of Commons, where it was read a first time on the 13th of December, and dropped. On the 25th of May, 1661, the Bill is reintroduced and read a first time. On the 5th of June it is read a second time, with a petition from Sir John Trevor and others against it. The opinion of the Judges was then taken on the subject, and they stated (June 15) that the Bill was neither against the Act of Indemnity nor the Act of Judicial Proceedings. The Bill is finally put off till after the adjournment. In the next session, on the 10th of December, the Bill is reintroduced, and the discussion is raised anew. After long debate the Bill is committed on the 13th of January, 1662, and passed on the 6th of February. It was sent to the Commons on the 7th of February, and after going through similar processes was passed on the 15th of March, 1662, on the grounds alleged in the Bill; Sir Orlando Bridgman having given his 'testimony' on the subject before the Committee of the House of Commons. A few amendments were inserted by the Lower House, in which the Lords concurred. The King, however, refused his assent to the Bill on the 19th of May, on which day Parliament was prorogued. The Chancellor Clarendon in his speech on this occasion makes reference, by the King's desire, to the fact that the King had declined to pass the Bill.

The protest of the Lords was made on the third reading.

Whereas before the question was put for passing the said Bill, leave was desired for entering a protest on the behalf of the Lords hereunder written, in case the vote upon the said Bill pass in the affirmative; we in pursuance thereof, according to the course of

Parliament in such like cases used, do enter our protestation against the said Bill for these reasons following :

It appears to us these two manors were sold by the Earl of Derby, and in pursuance of contracts desired and made by himself; that the purchasers are now in possession thereof, by good assurances in law, as deeds inrolled, feoffiments, fines, recoveries passed from the Earl and his Lady ; that, we conceive, by a future law to destroy assurances, which are good by the standing law, is of dangerous consequence, and in this case unreasonable, where the contracts and conveyances have appeared voluntary and desired on the Earl's part, in whom there was no disability to grant or convey, and the proceedings on the part of the purchasers to have been without colour either of error or crime : that we think it not reasonable by a new law to create an equity of redemption after a purchase fairly transacted and perfected, nor to require any account from the purchasers, when from the nature of the purchase we cannot reasonably expect it, and particularly, we think it beyond all pretence of justice, that they should be required to account for the sum of nine thousand pounds, which they received for the redemption of Hawarden, without any allowance made to them for the purchase thereof, which they made by direction of the Earl of Derby, and for his use, and were only reimbursed in this sum of nine thousand pounds, according to their articles, when the said Earl sold this manor to Serjeant Glynne ; and the business of Hawarden is altogether foreign, both to the title and substance of the Bill, and concerning which there hath not been anything heard at the bar or otherwise.

Besides, we cannot look upon this but as a breach of the Act of judicial proceedings, when by a new law we take away the force of those fines and recoveries which by that Act were made good, and no less than a trenching on the Act of Indemnity and Oblivion, when an estate so fairly derived must be looked upon as destroyed, only in favour of the Earl of Derby, when no argument from the demerits of the purchase could persuade it ; and that this is of such a consequence, as the same favour can never be denied to any one hereafter that shall ask it ; which, of necessity, will infer a general violation of that Act : this Bill tendeth to vacate the great assurances of the realm before-mentioned, which may be of so dangerous consequence, as to render buying and selling of land insecure,

uncertain and doubtful: it brings titles into examination in Parliament, after judgments given, as those of fines, contrary to the statute of 4 Hen. IV. ch. 22. It doth not restore the consideration given for the purchase; it creates suits and contentions between the parties, who have not, nor can have any about the said lands without this Act; whereas the authority of Parliament ought to be of last resort, and to mend and end the work of other courts, but not to make work for them; it seems to pass too soon; the cause appearing in the body of it not to be ripe for determination; and it is without precedent, for part of a cause to be judged in one court, and the rest of it in another; besides the Bill mentioneth some practices of the purchasers, which we conceive not proved.

Edward Hyde, Earl of Clarendon, Chancellor.  
 James Butler, Earl of Brecknock (Marquis of Ormond), Lord Steward.  
 Edward Montagu, Earl of Manchester.  
 John Roberts, Lord Robartes.  
 William Russell, Earl of Bedford.  
 George Digby, Earl of Bristol.  
 Algernon Percy, Earl of Northumberland.  
 Charles Rich, Earl of Warwick.  
 John Egerton, Earl of Bridgewater.  
 William Howard, Viscount Stafford.  
 Henry Arundell, Lord Arundel of Wardour.  
 Philip Stanhope, Earl of Chesterfield.  
 John Cecil, Earl of Exeter.  
 William Grey, Lord Grey de Warke.  
 Jerome Weston, Earl of Portland.  
 Arthur Annesley, Earl of Anglesey.  
 Philip Wharton, Lord Wharton.  
 Thomas Windsor-Hickman, Lord Windsor.  
 George Nevill, Lord Abergavenny.  
 Nicholas Leke, Earl of Scarsdale.  
 Arthur Capel, Earl of Essex.  
 James Howard, Earl of Suffolk.  
 William Paget, Lord Paget.  
 Thomas Belasyse, Viscount Fauconberg.  
 Charles Howard, Earl of Carlisle.

## XVIII.

FEBRUARY 8, 1662.

A Bill had been introduced into the Lords for disuniting the two hundreds of Dudston and King's Barton from the county of the city of

Gloucester, and for assigning them to the county. The municipality of Gloucester petitioned against the Bill, but it was passed—as a private Act—and received the royal assent on the 19th of May. It appears that the hundred of Dudston had been granted, with the emoluments and appurtenances annexed to it by Edward III, anno regni 10, to the Abbot of Gloucester at a fee farm rent of £12. Both it and the hundred of King's Barton were granted by James I, anno regni 8, to the three sons of General Whitmore of Slaughter in perpetuity. (Rudder's Gloucestershire.) It seems that Dudston was at the lower north gate of the city, and that King's Barton was one of the forest hundreds and contained four parishes. Lord Bolingbroke's protest seems to refer to some clause in the Act which modified the King's grant.

I dissent, conceiving it usual to confirm, not ordinary but dangerous to vacate grants made under the Great Seal, being the great assurances from the Crown.

Oliver St. John, Earl of Bolingbroke.

## XIX.

MAY 5, 1662.

By 13 and 14 Car. II, cap. viii, a sum of £300,000 was to be distributed ‘among the truly loyal and indigent commission officers, and for assessing of offices, and distributing the moneys thereby raised for their further supply.’ Under the Act, a large body of Commissioners were appointed to investigate cases in each county, and to recommend grants; the sum to be raised by an assessment on offices. On the 5th of May a proviso was offered, to the effect that the King should have the disposition of the money, and on a debate and division the question was carried in the negative; on which the following protest was entered.

On these reasons, that I conceive the sole and supreme power of disposing of moneys is in the King, and that no aid ought to be disposed but by his sole warrant and commission, and consequently that no person or persons may any ways join therein without prejudicing his Majesty’s prerogative; and hereon only I desire the admitting the proviso.

Oliver St. John, Earl of Bolingbroke.

## XX.

MAY 19, 1662.

A Bill was introduced into the House of Lords from the Commons for the repairing of common highways, 13, 14 Car. II, cap. 6, in which the

Lords made some alterations in respect of penalties, and the charges for repairing bridges. These amendments were rejected by the Lower House on the ground that they intruded on the privileges of the Commons in assessing the public. After debate the Lords gave way with a salvo insisting on their right, but conceding it on this occasion.

The following protest was inserted.

Whereas a Bill, entitled ‘An Act for enlarging and amending the common highways,’ came from the House of Commons, unto which the Lords added two several provisoës, laying a charge for the repair of two bridges, which provisoës were rejected by the House of Commons upon this ground, given to the Lords at several conferences by some members of the House of Commons, viz. That the Lords have no power to begin any Bill, that in any kind charged money either for repairing or paving of highways, mending of bridges, or other public use; which we conceived to be against the privilege of this House, and many precedents, as a statute made in 4 and 5 Philip and Mary, for assessing all persons therein mentioned for horse, arms, and foot-arms; and another Act in the time of Queen Elisabeth, for repair of Dover-Pier; and one other Act in the fifth year of the said Queen, for relief of the poor; and other acts: all which began in the House of Peers, and were assented to by the Commons, and by the royal assent passed into by-laws. And whereas the House of Peers did, after the said conference, pass this vote in the affirmative, viz. To agree with the House of Commons in leaving out the two provisoës, asserting their privileges at a conference; and whereas, before the putting the said vote, we whose names are hereunto subscribed, desiring liberty of our dissent unto the said vote: we do, for the reasons aforesaid, and to assert so much as involves so important and ancient a privilege of the House of Peers, enter our dissent and protestation against this vote.

John Roberts, Lord Robartes.

Charles Stanley, Earl of Derby.

Charles West, Lord Delawarr.

Arthur Capel, Earl of Essex.

Oliver St. John, Earl of Bolingbroke.

Arthur Annesley, Earl of Anglesey.

Charles Rich, Earl of Warwick.

James Touchet, Lord Audley (Earl of Castlehaven).

Thomas Culpeper, Lord Culpeper.

Edward Howard, Lord Howard of Escrick.

William Maynard, Lord Maynard.

Henry King, Bishop of Chichester.  
Richard Byron, Lord Byron.  
William Howard, Viscount Stafford.

## XXI.

JULY 24, 1663.

By 15 Car. II, cap. vii, an Act for the encouragement of trade, permission is given to import grain when the prices do not exceed certain fixed rates, and on the payment of a certain poundage; and to buy and sell such grain; a prohibition is laid on the importation of foreign manufactures into the colonies, and on the importation of certain kinds of colonial produce with foreign countries; permission is given to freely export foreign coin or bullion; a duty is levied of 20s. on every head of cattle between the 24th of August and the 20th of December, besides certain penalties to the informer and the poor; and of 10s. on every sheep; the fishery is confined to English built vessels; and the planting of tobacco is forbidden in England and Ireland. Permission is given to import cattle from the Isle of Man.

The following protest is thereupon inserted on the Journals.

A Bill, entitled 'An Act for the encouragement of trade,' being this day read the third time, and ready to be put to the question for passing into a law; it was moved, and granted by the House, that if the question passed in the affirmative, such Peers as were against the Bill might enter their protestation; and accordingly we whose names are subscribed do protest against the said Bill being made a law, for the reasons following:

1st, Because, in the free liberty given for transporting of money and bullion, this Bill crosseth the wisdom and care of our ancestors of all ages, who by many laws and penalties, upon excellent and approved grounds, have restrained such exportation, and thereby preserved trade in a flourishing condition.

2ndly, There appearing already great want of money in his Majesty's dominions, and almost all the gold of his Majesty's stamp gone, notwithstanding the restraint laid by law, and the importation of foreign commodities (which are grown to so great an esteem and use amongst us) being much greater than the export of our native and simple commodities, it must necessarily follow, by this free exportation, that our silver will also be carried away into foreign parts, and all trade fail for want of money, which is the measure of it.

3rdly, It will make all our native commodities lie upon our hands, when rather than stay for gross goods, which pay custom, the merchant, in a quarter of an hour, when his wind and tide serves, freights his ship with silver.

4thly, It trencheth highly upon the King's prerogative, he being by the law the only exchanger of money, and his interest equal to command that as to command the militia of the kingdom, which cannot subsist without it; and it is dangerous to the peace of the kingdom, when it shall be in the power of half a dozen or half a score rich, discontented, or factious persons, to make a bank of our coin and bullion beyond the seas for any mischief, and leave us in want of money; and it shall not be in the King's power to prevent it, the liberty being given by a law; nor to keep his mint going, because money will yield more from that at the mint.

5thly, Because a law of so great change, and threatening so much danger, is made perpetual, and not probationer.

6thly, Because, in the restraint laid on importation of Irish cattle, common right and the subjects' liberty is invaded; whilst they, being by law native Englishmen, are debarred the English markets, which seems also to monopolise the sale of cattle to some of his Majesty's English subjects, to the destruction of others.

7thly, It will, we conceive, increase the King's charge of Ireland, by calling for revenue from England, if that, which is almost the only trade of Ireland, shall be prohibited, as in effect it is; and so the people, we conceive, disabled to pay the King's dues, or grant subsidies in Ireland.

8thly, It threatens danger to the peace of the kingdom of Ireland, by universal poverty; which may have an unhappy influence upon the rest of his Majesty's dominions.

9thly, The restraint upon importation of Irish and Scotch cattle will, we conceive, be the decay of two of his Majesty's cities of England, Carlisle and Chester, make a dearth in London, and discommode many other parts of England. Other reasons are forborne, which time will produce.

Arthur Annesley, Earl of Anglesey.

## XXII.

JULY 25, 1663.

In 1663 a Bill was passed, appearing on the Statute Book as 15 Car. II, cap. vi, by which relief was given to such persons as were disabled by absence beyond seas, sickness, imprisonment, disability of body, or otherwise from making the declarations on or before St. Bartholomew's Day 1662, and who had thereby incurred the penalties of that Act. It was proposed, when the Bill was in Committee in the Lords, to add a clause, 'That the declaration and subscription of assent and consent in the said Act mentioned (i.e. the Act of Uniformity) shall be understood only as to the practice and obedience to the said Act, and not otherwise ;' and the Lords agreed to the clause. It dropped out in the Commons however, for the clause does not appear in the Act.

The following peers protested against the clause.

In regard we conceive that this clause in the Act, viz. ' . . . That the declaration and subscription of assent and consent, in the said Act mentioned, shall be understood only as to the practice and obedience to the said Act, and not otherwise,' is destructive to the Church of England as now established, we have therefore added our protestation against the clause.

James, Duke of York.  
 Henry Mordaunt, Earl of Peterborough.  
 Charles Stanley, Earl of Derby.  
 James Compton, Earl of Northampton.  
 John Mordaunt, Viscount Mordaunt.  
 Richard Sackville, Earl of Dorset.  
 John Egerton, Earl of Bridgwater.  
 Thomas Howard, Earl of Berkshire.  
 Charles Gerard, Lord Gerard.  
 Thomas Culpeper, Lord Culpeper.  
 William Maynard, Lord Maynard.  
 Charles Cornwallis, Lord Cornwallis.  
 John Lucas, Lord Lucas.  
 John Berkeley, Lord Berkeley of Stratton.

## XXIII.

NOVEMBER 29, 1664.

Robert Roberts, eldest son of Lord Robartes, his wife Sarah, and his son Charles Bodvile, petitioned the House of Lords on the 6th of March, 1664, being the day on which Parliament met, to the effect that certain parties, Thomas Wynn, Timothy Pollard, Thomas Pugh, Edward Griffith, and others had put forward an instrument purporting to be the will of

John Bodvile, whose only daughter and heir was Sarah wife of Robert Roberts, under which will a great estate of inheritance was conveyed away from the petitioners or some of them. The House took the case up, ordered the attendance of the defendants, heard Counsel, and on the 28th of November ordered the Chancellor (Clarendon) that he proceed to make a speedy decree in the High Court of Chancery in this case, according to equity and justice, and on the next day amended the order by the addition of the words ‘as it shall appear to him to be on either part, notwithstanding there be not any precedents in the case.’ The whole account of the case is given in ‘Reports in Chancery, Charles I to 20 Charles II, London, 8vo. 1693,’ p. 236. Roberts *v.* Wynn. The plaintiff’s Bill was dismissed without costs.

The two protests are on that part of the direction to the Chancellor which bids him make a decree though there be no precedent in the case.

Against which vote the Lord following doth protest and dissent (having liberty of the House so to do before the question was put) for that he is not satisfied to give directions how the Chancery should adjudge a cause, the merits whereof this House never heard at the bar, and which, he conceives, is not legally before this House; for that the former transactions and proceedings which this House made therein, and all debates, votes, and resolutions thereupon, are determined with a former session of Parliament, and so totally shut out of doors, as if it had never been entertained by this House; and for that the said vote seems to enlarge the bounds of the Chancery, which is by this vote directed to make a decree, though there hath been no precedent in the case, especially where the will of the dead may be overthrown, infants decreed out of a legal estate, and provision made by the testator to pay honest debts defeated and avoided.

Warwick Mohun, Lord Mohun.

## XXIV.

NOVEMBER 29, 1664.

I being unsatisfied in my judgment concerning the vote which passed this day, for an order to be directed from this House to the Lord Chancellor in the case of Mr. Roberts, did demand leave of the House to enter my dissent; and accordingly do protest against that vote for these reasons following:

1st, I conceive this may be of dangerous consequence, if, in this conjuncture of time, it should occasion any misunderstanding be-

twixt the two Houses; union of both Houses conduced so much to the safety of the King and Kingdom; for haply they may apprehend, as sometimes they have formerly done, that this House doth extend their power of judicature farther than ever hath formerly been; and therefore should think themselves interested, that if any remedy, in this extraordinary case, should be applied to Mr. Roberts, who is a member of their own House, it ought to be by the legislative power, and not by the judicial.

2ndly, Whereas it hath been the prudence and care of all former Parliaments to set limits and bounds to the jurisdiction of Chancery, now this order of directions (which implies a command) opens a gap to set up an arbitrary power in the Chancery, which is hereby countenanced by the House of Lords, to act not according to the accustomed rules or former precedents of that court, but according to his own will; *sic volumus, sic jubemus, stat pro ratione voluntas.*

Theophilus Clinton, Earl of Lincoln.

## XXV.

JANUARY 14, 1667.

A Bill had been brought from the House of Commons, the object of which was to prohibit the importation of cattle from Ireland and other parts beyond the seas, and fish taken by foreigners. It appears on the Statute Book as 18 Car. II, cap. 11. It recites the 15th Car. II, cap. 7, stating that the rents and values of land in England had fallen by the importation of vast quantities of cattle, and declares that from and after the 2nd of February, 1667, such an importation is a public and common *nuisance*, and shall be so adjudged, deemed, and taken to be to all intents and purposes whatsoever<sup>1</sup>. The Act was to continue for seven years, but was made perpetual by 32 Car. II, c. 2, § 2. The Lords demurred to this word, and a conference was held between the Houses on the 9th of January, in which the Commons object, that the Lords in a petition to the King having referred to the fact of the King being able to grant a license or dispensation induces them to insist on the word, because it (1) admits the thing dispensable in its own nature, which the Commons deny; (2) it argues a greater distrust of the thing than they allow; and (3) because this way of petitioning the King is wholly without precedent. The Lords give way on the 14th of January, and the following protest is entered on the Journals.

<sup>1</sup> See Clarendon's Life, vol. iii. p. 145. It was in the debates on this Bill that the Duke of Buckingham said that whoever was against the Bill must have either an Irish interest or an Irish understanding.

1st, Because, as we humbly conceive, the importation of Irish cattle is no nuisance; and therefore we could not consent to call it what it is not.

2ndly, Because the word *nuisance* was professedly designed by the House of Commons to restrain and limit a just, necessary, and ancient prerogative inherent in the Crown, for the good and safety of his Majesty's people, upon accidents and emergencies, which cannot be foreseen upon the making of new laws.

3rdly, Because there appears no precedent of any remedy provided against nuisances, but by perpetual laws and removing the nuisances; whereas this Bill is made but probationer, so that after a while the nuisance (if any) will revive.

Lastly, this most honourable House at a conference did timely (after several days debate) acquaint the Commons, that they resolved not to admit the word *nuisance*; and before the last conference entered the same day (as follows in the Journal of Parliament) that they had great reason to insist, and commanded their managers to declare so much to the Commons, when they let them know they did agree; which was done accordingly.

Robert Brudenell, Earl of Cardigan.

John Egerton, Earl of Bridgwater.

Richard Boyle, Earl of Burlington (Earl of Cork).

Arthur Annesley, Earl of Anglesey (Viscount Valentia).

Charles West, Lord Delawarr.

Edward Conway, Viscount Conway (Viscount Killtullagh).

James Touchet, Lord Audley (Earl of Castlehaven).

John Berkeley, Lord Berkeley of Stratton.

## XXVI.

JANUARY 23, 1667.

In consequence of the confusion arising from the great Fire of London, the litigation which might arise between landlords and tenants, and the general loss, about which it was said 'that every one concerned should bear a proportionable share of the loss, according to their several interests,' the Justices of the King's Bench and Common Pleas and the Barons of the Exchequer were empowered by 19 Car. II, cap. ii. to hear and determine all differences and demands whatever without any adjournment, summarily, &c., without formalities, &c., upon the verdict and inquisition of jurors, &c., proved to hear and determine, &c., nor shall any writ of error or certiorari lie for the removal or reversal of the same.

To this a protest is made.

By reason of the unlimited and unbounded power given to the Judges in this Bill, without any appeal, I enter my dissent to this Bill.

Henry Carey, Earl of Dover.

## XXVII.

FEBRUARY 4, 1667.

The House of Commons impeach John Mordaunt, Viscount Mordaunt, in certain articles, for certain high crimes and misdemeanours committed by him in his capacity as Constable of Windsor Castle. The articles may be found at length in the Lords' Journals for the 3rd of January, 1667, and consist mainly of certain outrages alleged to have been committed on one William Tayleur, who held an office in Windsor Castle, and was intending to be a candidate for the borough of Windsor in March 1661. The answer of Lord Mordaunt, which may be found in the Journals, was given in on the 17th of January. On the 26th of January the case came before the Lords, and Sir Robert Atkins, one of the managers, noticed that Lord Mordaunt was sitting 'on the form near the Bar, and was therefore sitting as a judge,' and also objected to his having counsel at the Bar. Enquiry was made as to precedents, and a report made on the 28th of January. On the 31st of January the Commons express themselves dissatisfied with the position which the Lords give to the offender. The Lords persist (and it is to be observed that Lord Mordaunt's presence is regularly entered in the register of Peers present), and on the 3rd of February the Commons request a conference on the subject. This is agreed to, and the following protest entered.

The reason why we have desired leave of the Lords to enter our dissents to the foregoing votes is, because we believe the conferring with the House of Commons, upon a matter only relating to the manner of proceedings in judicature, as we humbly conceive this to be, is a very great derogation to the privileges of this House; we do therefore enter our dissents accordingly.

Henry Pierrepont, Marquis of Dorchester.

John Egerton, Earl of Bridgwater.

Charles Howard, Lord Howard of Charlton.

## XXVIII.

FEBRUARY 5, 1667.

On this day the House of Commons sent a message to desire a free conference upon the subject matter of the last conference, concerning the

impeachment of Viscount Mordaunt. Lord Mordaunt was present in the Lords. The Lords refused to grant the conference

The following protest was entered.

The denial of a conference, which is the only way of keeping a good and right correspondence between the two Houses of Parliament, being ever unfit, I enter my dissent.

Henry Carey, Earl of Dover<sup>1</sup>.

### XXIX.

FEBRUARY 7, 1667.

An Act, 19 Car. II, cap. 3, was passed, giving very considerable powers to the Lord Mayor and Aldermen of London in details connected with the rebuilding of the city after the Great Fire, and granting a tax on imported coals to meet charges arising from the buildings, &c. The Act also lays down rules as to the materials to be used and mode of building to be adopted for the future. Hence the following protest was inserted.

For the exorbitant and unlimited powers given in this Bill to the Lord Mayor and Aldermen of the city of London, to give away or dispose of the property of landlords, I do here enter my dissent and protestation against the Bill.

Henry Carey, Earl of Dover.

### XXX.

NOVEMBER 20, 1667.

On this day a question was put, 'Whether upon these precedents (those of Strafford, Laud, Finch, and Radcliffe) and reasons of the House of Commons, and the whole debate thereupon, their Lordships are satisfied to comply with the desires of the House of Commons for sequestering from this House, and committing the Earl of Clarendon, without any particular treason assigned and specified?' and the question was negatived. The following protest was inserted.

We whose names are underwritten do, according to the ancient right and usage of all the Peers of the realm assembled in Parliament, after due leave demanded from the House in the usual manner and form, as the Journal-book doth shew, enter and record our protestation and particular dissents, as followeth, and for these reasons :

<sup>1</sup> Six other peers also dissent, but do not sign the Earl of Dover's reason.

1st, That we are satisfied, in agreement with so much of the reasons of the House of Commons alleged to that purpose, as upon a very long and solemn debate in this House did concur with our sense, that the Earl of Clarendon should be committed to custody, without assignment of special matter, until the particular impeachment shall be exhibited against him by the Commons before the Lords in Parliament; or else how shall any great officer of the Crown, and his accomplices, be prevented from evading to be brought to a fair and speedy trial?

2ndly, We do conceive that the four precedents urged by the House of Commons for his commitment as aforesaid, and to justify the way of their proceedings by general impeachment only, are valid, and full to the point of this case; and that the precedent of William de la Poole, Duke of Suffolk, in the 28th of Henry VI is no precedent at all to the contrary, in regard that it was no judgment nor appeal in Parliament, but rather an appeal to the King from the judicature of the Parliament, whilst the Parliament was sitting, which is not according to the known privileges and customs of this House.

3rdly, The Earl of Clarendon's power and influences in the absolute management of all the great affairs of the realm hath been so notorious ever since his Majesty's happy return into England, until the Great Seal was taken from him, that whilst he is at liberty few or none of the witnesses will, probably, dare to declare in evidence all that they know against him; for defect whereof the safety of the King's person, and the peace of the whole Kingdom, may be very much endangered.

4thly, We conceive, that in cases of treason and traitorous practices, the House of Commons have an inherent right in them to impeach any peer of the realm, or other subject of England, without assigning of special matter; because treason, either against the King's person, or the Government established, which are indivisibles, is such a speciality in itself alone, that it needs no farther specification as to the matter of safe custody; nor can it be suspected, that so honourable a body as the House of Commons would have accused a peer of the realm, of the Earl of Clarendon's eminency and condition, without very good cause.

George Villiers, Duke of Buckingham.  
George Monk, Duke of Albemarle.

Philip Herbert, Earl of **Pembroke and Montgomery**.  
 John Wilmot, Earl of **Rochester**.  
 Charles Goring, Earl of **Norwich**.  
 John Granville, Earl of **Bath**.  
 Charles Gerard, Lord **Gerard**.  
 James Compton, Earl of **Northampton**.  
 George Digby, Earl of **Bristol**.  
 Anthony Grey, Earl of **Kent**.  
 Charles Howard, Earl of **Carlisle**.  
 Thomas Howard, Earl of **Berkshire**.  
 James Fiennes, Viscount **Say and Sele**.  
 Henry Bennet, Lord **Arlington**.  
 Charles Howard, Lord **Howard of Charlton**.  
 Richard Vaughan, Lord **Vaughan** (Earl of Carbery).  
 Thomas Windsor Hickman, Lord **Windsor**.  
 Richard Byron, Lord **Byron**.  
 William Herbert, Lord **Powis**.  
 Christopher Roper, Lord **Teynham**.  
 John Lucas, Lord **Lucas**.  
 John Cosin, Bishop of **Durham**.  
 Herbert Croft, Bishop of **Hereford**.  
 John Berkeley, Lord **Berkeley of Stratton**.  
 William Lucy, Bishop of **St. David's**.  
 Henry Carey, Earl of **Dover**.  
 John Poulett, Lord **Poulett**.

### XXXI.

NOVEMBER 21, 1667.

On Monday, the 18th of November, the House of Commons, through Sir Robert Howard, directed a conference with the Lords, on the subject-matter of the last conference concerning the Earl of Clarendon, the object of the Commons having been to induce the Lords to commit Clarendon to prison, without alleging the special treason with which they were about to charge him. The Lords declined to take this course, and the Commons thereupon request a conference, which was granted.

Against this decision the following protest is entered.

The Lords whose names follow having leave to protest, if the question for a conference with the House of Commons upon the last message of the Lords should pass in the affirmative, do accordingly enter their dissents for these reasons :

1st, Because the Lords having first desired a conference the Commons did not give it.

2ndly, Because there is no precedent, that they can find, of any such proceeding in Parliament before this.

3rdly, Because the House of Commons could not tell what was to be offered at the conference desired by the Lords.

4thly, Because, for ought they knew, the Lords at the conference intended to agree with their reasons, or give reasons against them.

5thly, Because there is no precedent of free conferences (nor can they, as we conceive, be) in points relating to judicature, which is entirely the Lords, whose work is to consider the reasons offered by the Commons, and give the rule.

Arthur Annesley, Earl of Anglesey.  
William Bruges, Lord Chandos.  
John Egerton, Earl of Bridgwater.

## XXXII.

DECEMBER 12, 1667.

On this day, the Bill for the banishment of Clarendon was read a third time and passed.

The following protest was thereupon entered.

I whose name is underwritten do, according to the ancient right and usage of all the peers of the realm assembled in Parliament, after due leave demanded from the House in the usual manner and form, as the Journal-book doth shew, enter and record my protestation and dissent as followeth, and for these reasons :

1st, That without having ever been in prison, or imprisonment appointed, or any legal charge brought, it seems unjust to punish the Earl of Clarendon for only withdrawing himself; it not being at all certain to the House, that he is gone out of the kingdom; and if it were known to the Lords that he were fled beyond the seas, though the fault would be very great in a person who hath lately been in such trust, yet perpetual exile, and being for ever disabled from bearing any office, and the other penalties in the Bill, seems too severe a censure.

2ndly, That it may, perhaps, give some occasion for the scandal to have it believed, that the House of Commons, and others, by standing so long upon pretence of a privilege to require commitment before special matter of treason assigned, were in doubt, that no proof of treason could be made out against the party accused;

and that they had therefore designed, through terror, to make him fly, and fear lest he should yet return to be tried, in case they should bring in special matter of treason, as they ought to do, whensoever they accuse.

3rdly, That by this Bill, power being taken from the King to pardon, it appeareth to be a great intrenchment upon his Majesty's royal prerogative.

4thly, That there can be no such case, as hath been pretended, ever to cause a necessity in the House of Commons not to acquaint the Lords with the particulars openly made known to them, by which they were first satisfied to find ground to accuse.

5thly, That the House of Commons, so far judging any article to be treason, as to insist upon commitment, without imparting the particulars to the Lords, do seem therein to usurp that first part of judicature from the Lords, who are the highest court of justice in the kingdom.

6thly, That to require such commitment seems to be contrary to the Petition of Right and Magna Charta, and the rights not only of the Peers and great persons of this kingdom, but the birthright even of the meanest subjects; and therefore those proceedings not having been according to law and the ancient rules of Parliament, hath given opportunity for the Earl of Clarendon to absent himself.

7thly, The commitment upon a general impeachment hath been heretofore, and may be again, of most evil and dangerous consequence; and, as is conceived, the Lords have yet no way for them so well to justify their fair and upright proceedings in the Earl of Clarendon's business, and the true regard they have had herein to the King and kingdom, as to decline this Bill of Banishment, and to expect a particular accusation of the said Earl; and thereupon according to law and justice to appoint him a day for appearance, which if he observe not, without further process, sentence might lawfully be pronounced against him.

William Wentworth, Earl of Strafford.

Four other Peers—Lords Berkeley of Berkeley, Holles, Lexington, and Culpeper—dissent from the Bill, and protest, but they do not sign the above reasons.

## XXXIII.

NOVEMBER 22, 1669.

On the 10th of November the Lords made an order that the Committee of Privileges should meet on the next morning at 9 A.M. to consider of and prepare a Bill to be offered to this House, concerning privilege and judicature in Parliament. On the 15th of November they reported that they had made progress, but could not proceed further until the pleasure of the House was known, whether there shall be a clause inserted touching the trial of Peers ; and on a question being put, it was decided in the affirmative. The Bill so prepared was read a first time on the 16th of November, and a second on the 17th ; committed on the 18th and 19th, and passed on the 22nd ; and sent to the House of Commons on the same day, where it seems to have dropped.

The following protest is entered on the third reading.

We humbly conceive, that if by reason of the Great Charter, and some Acts confirming it, we are not disabled to alien, as to the judiciary and other privileges of Parliament and Peerage, yet thereby they are indicated so fundamental, as we ought not to part therewith.

Basil Feilding, Earl of Denbigh.  
Oliver St. John, Earl of Bolingbroke.  
William Howard, Viscount Stafford.  
John Carey, Earl of Dover.  
William Petre, Lord Petre.

## XXXIV.

NOVEMBER 25, 1669.

In 1662, Cuthbert Morley petitioned the House of Lords in a case respecting himself and certain of the families of Elwes, Maidwell, Hill, and others ; and on the 21st of April, after hearing counsel, the petition is dismissed and the parties left to their ordinary remedies in law and equity. On the 11th of November, 1667, the parties again apply to the Lords, praying that a release made to Jeremy Elwes and also a dismission of their Bill in Chancery upon hearing of their cause in that Court, may be set aside. On the 11th of December the Committee report that the petitioners cannot be relieved in the ordinary Courts in Westminster Hall. On the 24th of February, 1668, the decree in Chancery of which the plaintiffs complain was read, and on the 9th of March, the House after debate, affirmed, five Peers protesting, that relief shall be given to the petitioners. On the 16th of March the Lords resolve to reverse the decree, ten Peers protesting. On the 31st of March the Lords resolve that the cause be remitted to Chancery, and the Lord-Keeper ordered to

proceed as upon an equitable mortgage, four Peers protesting. The recital of the facts is contained in the Journal for the 31st of March, and the case is remitted to Chancery, the Lord-Keeper (Bridgman) being directed to treat the case as an equitable mortgage. Between this period and the reassembling of Parliament in October, Morley died, and the question arose whether there were any abatement of the suit consequent on this event. This was decided in the negative, and a vote being taken in the House that the case is properly before their Lordships, the Lord-Keeper, to whom the question was referred, wished to delay an answer to the question whether his decree contravened the resolution of the House arrived at on the 31st of March. The letter of the Lord-Keeper is read on the 17th of March, 1670, in which he recommends that Mr. Grenville, whose wife was heiress to Morley, should obtain a Bill of Revivor. This is done by order of the Lords, and no more is heard of the matter. There is no report of the case in the Chancery Reports (1694).

The annexed protest was entered on the question as to whether the cause was properly before the Lords, for any further directions to the Court of Chancery.

Before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative; which being granted, they did accordingly enter their dissents, by subscribing their names and annexing their reasons.

1st, Because by the death of Morley the suit in Chancery, wherein this House gave direction, seems to us to be abated, and no longer depending there, till it shall be revived by the ordinary course of that Court.

2ndly, Because that Court, if the cause do yet depend, have made no final decree upon the former direction of the Lords' House.

3rdly, We know of no precedent, since the first beginning of Parliament to this day, nor were any shewed, that ever, a decree in Chancery, upon appeal to this House, being reversed, and directions given for a new hearing of the cause in that Court, the Lords did resume the cause, and give further directions (before a final decree) at the solicitation of either of the parties, where the Lord-Keeper or Chancellor found no difficulty in proceedings on the first directions.

4thly, To admit an appeal or new resort to this House by either party, upon an interlocutory decree, or decretal order, as this was, we conceive would endlessly multiply a cause, be vexatious and chargeable to the subject, and put this House to many trials and

judgments in the same cause, and take that jurisdiction from the Chancery which is proper for them, viz. to mend their own work upon Bills of Review or Reversal, if error or mistake shall be found in their proceedings or decrees.

5thly, If this sort of appeal be allowed to the plaintiff, the like cannot be denied to the defendant, and so *toties quoties*; for there can be no limitation, if either side apprehend danger, and resort to their Lordships for explanation of the former or for further directions, until their Lordships set down a rule how often the plaintiff or defendant may resort back to them upon interlocutory proceedings.

6thly, Though their Lordships have power upon appeal to reverse any decree of that cause, yet, we humbly conceive, this House will not put the particular equity into the conscience or mouth of the Judge; but that the general direction given in this cause to proceed, as upon an equitable mortgage, is as much as can be done (after the relief already given in laying aside the release and reversing the decree given by the late Lord-Chancellor) till after a final decree either party shall find cause to appeal.

7thly, The further direction their Lordships are moved to give in this cause, is in a point never stirred by the plaintiff in his first appeal, and may, for ought yet appears to their Lordships, never happen in the case, or be made use of in the decree of the Court of Chancery to be made; and therefore very improper for the Lords to interpose by anticipation.

8thly, This way of frequent and importunate application to the Lords in the same cause, before it be ripe for hearing or judgment, we conceive to be a dangerous precedent, and both derogatory and dilatory to the proceedings of this High Court.

Arthur Capel, Earl of Essex.  
Charles Howard, Earl of Nottingham.  
Robert Brudenell, Earl of Cardigan.  
Arthur Annesley, Earl of Anglesey.  
John Egerton, Earl of Bridgwater.  
John Lucas, Lord Lucas.  
Thomas Belasyse, Viscount Fauconberg.  
George Savile, Viscount Halifax.

XXXV.

DECEMBER 17, 1670.

The case of Pitt *v.* Pelham, in which the House of Lords gave relief against the dismission of a Bill in Chancery, and 'directed the Lord-Keeper (Bridgman) to order in Chancery that the heir-at-law of Sherley, the testator, be ordered by that Court to sell the land, and distribute the money according to the direction of the will,' is given fully in Chancery Reports (1693), p. 283.

The will, as to the appointment of the sale of the lands in question, being void in law, there is no equity to compel the heir to sell the lands in question to his own disherison; and if it should be otherwise, it would be of a dangerous consequence; for then the Lord-Keeper might, by the same reason, make good all void wills and other assurances.

Anthony Ashley Cooper, Lord **Ashley**.

XXXVI.

MARCH 9, 1671.

A Bill concerning Privilege of Parliament was introduced into the House of Lords on the 16th of December, 1670, and on reaching the stage of Committee was negatived. Many Peers protest, but only two give reasons. The protest is apparently in Lord Anglesey's own handwriting.

Because I conceive there is no colour of law to claim a privilege of freedom from suits; and for many other reasons.

Arthur Annesley, Earl of **Anglesey**.  
Denzil Holles, Lord **Holles**.

XXXVII.

MARCH 15, 1671.

The case of Cusack is given at length in the Lords' Journals for the 15th and 16th of March. The House resolved that the execution of a judgment of the Irish Bench be suspended. The following protest is written apparently in Lord Anglesey's handwriting. Several other Peers protest without reasons.

Because the defendants were never yet summoned nor heard, and

are not parties to the judgment; and for many other reasons, very obvious, as I humbly conceive.

Arthur Annesley, Earl of Anglesey.

### XXXVIII.

APRIL 18, 1675.

The King made a short speech at the opening of Parliament, and two questions are proposed. 1. Whether the humble thanks of this House shall be now presented to his Majesty, for his gracious speech. 2. Whether the humble thanks of this House shall be presented to his Majesty, for his gracious expressions in his speech; and the first question was carried in the affirmative.

The question being put to give the King thanks for his speech, and we proposing to thank his Majesty for his gracious expressions in his speech, and it being laid aside, do think fit to enter our dissent to the vote, as it is now passed, because of the ill consequence we apprehend may be from it; and that we think this manner of proceeding not so suitable with the liberty of debate necessary to this House.

Charles Paulet, Marquis of Winchester.  
 Thomas Grey, Earl of Stamford.  
 James Cecil, Earl of Salisbury.  
 Henry Hyde, Earl of Clarendon.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 William Paget, Lord Paget.  
 Charles Mohun, Lord Mohun.  
 George Savile, Viscount Halifax.  
 Philip Wharton, Lord Wharton.  
 George Booth, Lord Delamere.

### XXXIX.

APRIL 21, 1675.

On the 15th of April a Bill was introduced and read for the first time, entitled 'An Act to prevent the dangers which may arise from persons disaffected to the Government.' It was read a second time on the 20th of April, and, after long debate, the further consideration is adjourned to the 21st, when a question was raised, 'Whether this Bill does so far entrench on the privileges of this House, as it ought therefore to be cast out?' which question was resolved in the negative. The following protest is therefore entered.

We whose names are underwritten, being Peers of this realm, do, according to our rights, and the ancient usage of Parliaments, declare, that the question having been put, whether the Bill entitled ‘An Act to prevent the dangers which may arise from persons disaffected to the Government,’ doth so far intrench upon the privileges of this House, that it ought therefore to be cast out, it being resolved in the negative; we do humbly conceive, that any Bill which imposeth an oath upon the Peers, with a penalty, as this doth, that upon the refusal of that oath they shall be made incapable of sitting and voting in this House; as it is a thing unprecedented in former times, so is it, in our humble opinion, the highest invasion of the liberties and privileges of the peerage that possibly may be, and most destructive of the freedom which they ought to enjoy as Members of Parliament, because the privilege of sitting and voting in Parliament is an honour they have by birth, and a right so inherent in them, and inseparable from them, that nothing can take it away, but what, by the law of the land, must withal take away their lives, and corrupt their blood: upon which ground we do here enter our dissent from that vote, and our protestation against it.

George Villiers, Duke of **Buckingham**.  
William Russell, Earl of **Bedford**.  
Charles Paulet, Marquis of **Winchester**.  
James Cecil, Earl of **Salisbury**.  
Richard Sackville, Earl of **Dorset**.  
John Egerton, Earl of **Bridgwater**.  
Basil Feilding, Earl of **Denbigh**.  
George Digby, Earl of **Bristol**.  
Anthony Ashley Cooper, Earl of **Shaftesbury**.  
Charles Howard, Earl of **Berkshire**.  
Robert Bruce, Earl of **Ailesbury**.  
Charles Mohun, Lord **Mohun**.  
William Fiennes, Viscount **Say and Sele**.  
Thomas Grey, Earl of **Stamford**.  
William Paget, Lord **Paget**.  
Philip Wharton, Lord **Wharton**.  
Henry Hyde, Earl of **Clarendon**.  
George Savile, Viscount **Halifax**.  
Charles North, Lord **Grey of Rolleston**.  
George Booth, Lord **Delamere**.  
Denzil Holles, Lord **Holles**.  
William Petre, Lord **Petre**.  
Ralph Eure, Lord **Eure**.

## XL.

APRIL 26, 1675.

The Bill referred to in the previous protest (No. XXXIX) was debated anew on the 26th of April, and the question was put whether it should be committed. The question was carried in the affirmative; and the following protest was entered.

The question being put, whether the Bill, entitled 'An Act to prevent the dangers which may arise from persons disaffected to the Government,' should be committed? It being carried in the affirmative; and we, after several days debate, being in no measure satisfied, but still apprehending that this Bill doth not only subvert the privilege and birthright of the Peers, by imposing an oath upon them, with the penalty of losing their place in Parliament, but also, as we humbly conceive, does strike at the very root of Government, it being necessary to all Governments to have freedom of votes and debates in those who have power to alter and make laws; and besides, the express words of this Bill obliging every man to abjure all endeavours to alter the government in the Church, without regard to anything that rules of prudence in Government, or Christian compassion to Protestant Dissenters, or the necessity of affairs at any time shall or may require: upon these considerations, we humbly conceive it of too dangerous consequence to have any Bill of this nature so much as committed, do enter our dissent from that vote, and protestation against it.

George Villiers, Duke of Buckingham.  
Charles Paulet, Marquis of Winchester.  
James Cecil, Earl of Salisbury.  
Basil Feilding, Earl of Denbigh.  
Henry Hyde, Earl of Clarendon.  
George Digby, Earl of Bristol.  
Thomas Grey, Earl of Stamford.  
Charles Howard, Earl of Berkshire.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Charles Mohun, Lord Mohun.  
George Booth, Lord Delamere.  
Philip Wharton, Lord Wharton.

## XLI.

APRIL 29, 1675.

A call of the House was made, immediately after the last protest had been written, when it appeared that twenty-eight Temporal and six Spiritual Peers had not taken the oath of allegiance. Then two questions were put. 1. 'Whether the House taking offence at divers expressions entered in the protestation entered by some Lords on the 26th of April, and the said Lords severally and voluntarily declaring that they had no intention to reflect upon any Member, much less upon the whole House, the House declared that they were satisfied in this declaration.' 2. 'Whether that the reasons given in the protestation entered on the 26th of this instant April do reflect on the honour of this House, and are of dangerous consequence.' The first question was negatived, and the second affirmed.

Whereon the following protest is entered.

Whereas it is the undoubted privilege of every peer in Parliament, when a question is passed contrary to his vote and judgment, to enter his protestation against it; and that in pursuance thereof the bill entitled 'An Act to prevent the dangers which may arise from persons disaffected to the Government,' being conceived by some Lords to be of so dangerous a nature, as that it was not fit to receive so much as the countenance of a commitment, those Lords did protest against the committing of the said Bill; and the House having taken exceptions at some expressions in their protestation, those Lords, who were present at the debate, did all of them severally and voluntarily declare, that they had no intention to reflect upon any member, much less upon the whole House; which, as is humbly conceived, was more than in strictness did consist with that absolute freedom of protesting which is inseparable from every member of this House, and was done by them more out of their great respect to the House, and their earnest desire to give all satisfaction concerning themselves and the clearness of their intentions; yet the House not satisfied with this their declaration, but proceeding to a vote, 'That the reasons given in the said protestation do reflect upon the honour of the House, and are of dangerous consequence;' which is, in our humble opinion, a great discountenancing of the very liberty of protesting; we, whose names are underwritten, conceiving ourselves and the whole House of Peers extremely concerned, that this great wound should be given

(as we do in all humility apprehend) to so essential a privilege of the whole peerage of this realm, as is their liberty of protesting, do now (according to our unquestionable right) make use of the same liberty to enter this our dissent from and protestation against the said vote.

George Villiers, Duke of **Buckingham**.  
 Charles Paulet, Marquis of **Winchester**.  
 Richard Sackville, Earl of **Dorset**.  
 John Egerton, Earl of **Bridgwater**.  
 Basil Feilding, Earl of **Denbigh**.  
 William Russell, Earl of **Bedford**.  
 Charles Howard, Earl of **Berkshire**.  
 James Cecil, Earl of **Salisbury**.  
 Anthony Ashley Cooper, Earl of **Shaftesbury**.  
 Robert Bruce, Earl of **Ailesbury**.  
 Henry Hyde, Earl of **Clarendon**.  
 William Fiennes, Viscount **Say and Sele**.  
 Charles Mohun, Lord **Mohun**.  
 Denzil Holles, Lord **Holles**.  
 George Savile, Viscount **Halifax**.  
 Philip Wharton, Lord **Wharton**.  
 Ralph Eure, Lord **Eure**.  
 Charles North, Lord **Grey of Rolleston**.  
 Benjamin Mildmay, Lord **Fitzwalter**.  
 George Booth, Lord **Delamere**.  
 James Touchet, Lord **Audley** (Earl of Castlehaven).

## XLII.

MAY 4, 1675.

The Bill already referred to went into Committee, and a suggestion was made that certain words should be added to the first enacting clause of the Bill. The suggestion was accepted by the House, and the following protest is entered.

Whereas upon the debate on the Bill, entitled ‘An Act to prevent the dangers which may arise from persons disaffected to the Government,’ it was ordered by the House of Peers, the 30th of April last, that no oath shall be imposed by any Bill or otherwise upon the Peers, with a penalty, in case of refusal, to lose their places and votes in Parliament, or liberty of debates therein; and whereas also upon debate of the said Bill, it was ordered, the 3rd of this instant May, that there shall be nothing in this Bill which shall extend to deprive either of the Houses of Parliament, or any

of their members, of their just ancient freedom and privilege of debating any matters or business which shall be propounded or debated in any of the said Houses, or at any conferences or committees of both or either of the said Houses of Parliament, or touching the repeal or alteration of any old, or preparing any new laws, or the redressing of any public grievance ; but that the said members of either the said Houses, and the assistants of the House of Peers, and every of them, shall have the same freedom of speech, and all other privileges whatsoever, as they had before the making of this Act ; both which orders were passed as previous directions to the Committee of the whole House, to whom the said Bill was committed, to the end that nothing should remain in the said Bill which might any ways tend towards the depriving of either of the Houses of Parliament, or any of their members, of their ancient freedom of debates or votes, or any other of their privileges whatsoever ; yet the House being pleased, upon the report of the said Committee, to pass a vote that all persons who have or shall have a right to sit and vote in either House of Parliament, should be added to the first enacting clause in the said Bill, whereby an oath is to be imposed upon the members of either House ; which vote, we whose names are underwritten, being Peers of this Realm, do humbly conceive is not agreeable to the said two previous orders ; and it having been humbly offered and insisted upon by divers of us, that the proviso in the late Act, entitled 'An Act for preventing dangers which may happen from Popish recusants,' might be added to the Bill depending, whereby the peerage of every Peer of this Realm, and all their privileges, might be preserved in this Bill as fully as in the said late Act ; yet the House not pleasing to admit of the said proviso, but proceeding to the passing of the said vote, we do humbly, upon the grounds aforesaid, and according to our undoubted right, enter this our dissent from, and protestation against the same.

George Villiers, Duke of Buckingham.  
William Russell, Earl of Bedford.  
Charles Paulet, Marquis of Winchester.  
James Cecil, Earl of Salisbury.  
Richard Sackville, Earl of Dorset.  
John Egerton, Earl of Bridgwater.  
Basil Feilding, Earl of Denbigh.  
Thomas Grey, Earl of Stamford.

Charles Howard, Earl of Berkshire.  
 Henry Hyde, Earl of Clarendon.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Charles Mohun, Lord Mohun.  
 George Booth, Lord Delamere.  
 Philip Wharton, Lord Wharton.  
 Ralph Eure, Lord Eure.

## XLIII.

MAY 6, 1675.

The case of Sir John Fagg, and the quarrel which broke out between the two Houses of Parliament in connexion with this case and that of Skinner, have been commented on by Hallam and other writers on the Constitution. In the case of Fagg the Lords determined to send a message to the Commons in these words, ‘That the House of Commons need not doubt but that their Lordships will have a regard to the privileges of the House of Commons as they have of their own.’ On this the following protest was entered.

Because the answer voted to be sent to the House of Commons being the same that was sent down formerly in the case of Hale and Slingsby, hath, as we with all humility do apprehend, been already mistaken by them, as a condescension of this House to forbear proceeding in judicature in affairs of this nature, and appears to us very liable to so great a misconstruction, that it may seem, in some measure, to acknowledge that the House of Commons have a claim to some privilege in judicature, which is a thing that, we conceive, belongs solely to this House.

William Russell, Earl of Bedford.  
 John Egerton, Earl of Bridgewater.  
 Richard Sackville, Earl of Dorset.  
 Basil Feilding, Earl of Denbigh.  
 George Digby, Earl of Bristol.  
 Charles Howard, Earl of Berkshire.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Francis Newport, Viscount Newport.  
 Thomas Culpeper, Lord Culpeper.

## XLIV.

MAY 10, 1675.

The case of Viscount Loftus, brought from the House of Commons, was ordered to be heard in the Lords on the 9th of September, 1641,

and the circumstances of the case are told at length in a declaration upon complaint of Adam, Lord Viscount Ely, late Chancellor of Ireland, concerning an illegal decree and other unjust proceedings against the Lord Viscount Ely on the part of the Earl of Strafford, and at the instance of Sir John Gifford, and are inserted on the 14th of April, 1642, in the Lords' Journal. On the 3rd of May the case was taken into consideration and the decree of Strafford was absolutely reversed and certain directions were given. It appears that on the 10th of May, 1675, on a petition of one Dacres Barret, the decree of the 3rd of May, 1642, was rescinded or at least suspended, and the case admitted to further hearing.

Upon this the following protest is inserted in the Journal.

We whose names are underwritten, having, before the putting of the said question, desired leave of the House to enter our protestation if the same were carried in the negative, do accordingly enter our dissent and protestation for the reasons following :

1st, Because this resolution retains a complaint, which, upon weighty grounds, appearing in the judgment of Parliament, and in the pleadings in this cause, as we humbly conceive, ought to be dismissed.

2ndly, It is a very dangerous precedent, and may be of ill consequence to the judicatory of this high Court, if not destructive thereunto, after above three and thirty years to shake a judgment made against an extrajudicial decree of the council-board in Ireland, grounded on a supposed parole agreement pretended to be made four and fifty years ago, and built upon a single testimony, various in itself, for manors and lands of inheritance, of a great yearly value, and wholly destructive to the family of a viscount of that kingdom ; and all this, after the said judgment fully executed, after settlement of marriage, for great and valuable considerations, made upon the heirs male of the family for support of the honour to them descendable, and divers leases and contracts touching several parts of the estate, and a great portion of the sister paid, chargeable on the premises, and great debts of the Lord Chancellor Loftus ; and part thereof sold and other part mortgaged ; all which transactions have been founded upon the said judgment in Parliament, and the said estate quietly enjoyed under it ever since.

3rdly, Because it seems to us unreasonable, and very insecure for the subject, that such a judgment, upon the last resort, vacating a decree, vicious both in form and matter, and making a full settlement between the parties, should, after most of the witnesses dead,

and after those under whom the now complainant claims their submission thereunto, and taking benefit by the execution thereof, and receiving some thousands of pounds thereupon, be drawn into question, and the merits of the cause reheard, much less that new matters should be admitted in a cause so concluded.

4thly, We conceive the plea of the Lord Loftus, upon the matters aforesaid, to be good and valid in law.

5thly, That to admit a rehearsing can only tend to impoverish the parties and increase divisions between near relations, which the honour and wisdom of this high court ever endeavours to prevent.

Arthur Annesley, Earl of Anglesey.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Basil Feilding, Earl of Denbigh.  
 Charles Howard, Earl of Carlisle.  
 Richard Vaughan, Lord Vaughan (Earl of Carbery).  
 William Widdrington, Lord Widdrington.

## XLV.

MAY 27, 1675.

The House of Commons had received information on the 15th of May that Sir Nicholas Houghton had brought a cause upon appeal to the House of Lords against Mr. Arthur Onslow, a member of the House of Commons, and that it is appointed that the cause is to be heard at the bar of the House on Monday the 17th of May. On this they forbid Mr. Onslow from making an appearance, order that Sir N. Houghton be taken into custody by the Serjeant-at-Arms for breach of privileges, vote that whoever shall appear at the bar of the Lords' House to prosecute any suit against any member of this House shall be deemed a breaker and infringer of the rights and privileges of this House, and desire the Lords to have regard to the privileges of the Commons. Subsequently they desire a conference; which the Lords decline, on the ground that 'the whole case concerns the judicature of the Lords, on which they can admit of no debate, nor grant any conference.'

On this the following protest is entered.

Because they do humbly conceive this question, being carried in the negative, deprives this House of the advantage of making use of that answer to the House of Commons, which would have been the surest way to have justified and preserved the right of the Lords in judicature upon this occasion.

John Egerton, Earl of Bridgwater.

Thomas Grey, Earl of Stamford.  
 Charles Mohun, Lord Mohun.  
 Charles North, Lord Grey of Rolleston.

## XLVI.

NOVEMBER 4, 1675.

After prorogation, the House of Lords met again on the 13th of October, 1675, and on the 29th a petition was presented by Thomas Sherley, to desire a day for hearing the case between him and Sir John Fagg. The petition was read next day, and the House being adjourned to the 25th was debated, and it was moved that the order concerning judicature made on the 29th of March, 1673, should be considered, and certain precedents be laid before the House. The subject was debated during the whole sitting of the 26th and 27th of October and the 4th of November, there having been an adjournment between the last two dates. On the last day it was decided that the hearing of the case between Dr. Thomas Sherley and Sir John Fagg should be appointed for the 20th of November. On the 19th of November a message came from the House of Commons desiring a conference between the two Houses for ‘the preservation of a better understanding’ between them. The conference meets and reports, alluding to the advice of the King in his speech, that they should defer their debates till ‘they had brought such Public Bills to perfection as might conduce to the good and safety of the Kingdom.’ The Lords however resolve that they will ‘hear the cause to-morrow.’ On that day however Sherley’s counsel begged for delay, and on the 22nd the sitting of Parliament was prorogued.

The following protest refers to the proceedings of the 4th of November.

1st, Because it seems contrary to the use and practice of this high court (which gives example to all other courts) upon a bare petition of the plaintiff Dr. Sherley, in a cause depending last session, and discontinued by prorogation, to appoint a day for hearing of the cause before the defendant is so much as summoned, or appears in court, or to be alive.

2ndly, The defendant, by the rules of this court, having liberty upon summons to make a new answer, as Sir Jeremy Whitchcott was admitted, after summons, to do last session in Darrell’s cause against him, discontinued by prorogation, or to mend his answer, or to plead as he shall see cause, is deprived of this and other benefits of law, by appointing a day of hearing without these essential forms.

3rdly, It appears, by the plaintiff’s own shewing in his petition, that his case against a purchaser is not relievable in equity; and

therefore ought to be dismissed without putting the parties to a further charge.

4thly, It appears by his own shewing, and the defendant Sir John Fagg's plea, that he comes hither *per saltum*, and ought to attend judgment in the inferior courts, if his case is relievable, and not to appeal to the highest court till either injustice is done him below, or erroneous judgment given against him, and relief denied him upon review.

5thly, The danger of this precedent is so universal, that it shakes all the purchasers of England.

Arthur Annesley, Earl of Anglesey.

## XLVII.

NOVEMBER 20, 1675.

On the 20th of November a motion was made that 'this House might make an humble address to his Majesty for the dissolution of this Parliament.' The motion that the question should be put, was carried in the affirmative, but the question itself was rejected by two votes, fifty to forty-eight. An account of the arguments employed in this debate will be found in a pamphlet printed at Oxford, Bodley Tracts 134 (1675, 1). The speeches of Lord Shaftesbury and the Duke of Buckingham were printed at Amsterdam, and with them a list of the peers who voted for and against the address, and are to be found in Bodley State Tracts 1125. It is probable that the pamphlets were written by Lord Shaftesbury. All the bishops voted against the address, and most of the government officials. The Duke of York was in the minority.

The following protest was entered on the last day of the session.

We whose names are underwritten, peers of this Realm, having proposed 'That an humble address might be made to his Majesty from this House, that he would be graciously pleased to dissolve this Parliament,' and the House having carried the vote in the negative; for the justification of our loyal intentions towards his Majesty's service, and of our true respect and deference to this honourable House, and to shew that we have no sinister or indirect ends in this our humble proposal, do, with all humility, herein set forth the grounds and reasons why we were of opinion that the said humble address should have been made.

1st, We do humbly conceive, that it is according to the ancient laws and statutes of this Realm that there should be frequent and

new Parliaments, and that the practice of several hundred years hath been accordingly.

2ndly, It seems not reasonable that any particular number of men should, for many years, engross so great a trust of the people, as to be their representatives in the House of Commons, and that all other the gentry, and the members of corporations of the same degree and quality with them, should be so long excluded ; neither, as we humbly conceive, is it advantageous to the government, that the counties, cities, and boroughs should be confined for so long a time to such members as they have once chosen to serve for them ; the mutual correspondence and interest of those who choose, and are chosen, admitting great variations in length of time.

3rdly, The long continuance of any such who are entrusted for others, and who have so great a power over the purse of the nation, must, in our humble opinion, naturally endanger the producing of factions and parties, and the carrying on particular interests and designs, rather than the public good.

And we are the more confirmed in our desires for the said humble address, by reason of this unhappy breach fallen out betwixt the two Houses, of which the House of Peers hath not given the least occasion, they having done nothing but what their ancestors and predecessors have in all time done, and what is according to their duty, and for the interest of the people that they should do ; which notwithstanding the House of Commons have proceeded in such an unprecedented and extraordinary way, that it is, in our humble opinion, become altogether impracticable for the two Houses, as the case stands, jointly to pursue those great and good ends for which they were called. For these reasons we do enter this our protestation against, and dissent unto, the said vote.

George Villiers, Duke of Buckingham.  
Richard Sackville, Earl of Dorset.  
Charles Paulet, Marquis of Winchester.  
James Cecil, Earl of Salisbury.  
Thomas Grey, Earl of Stamford.  
Charles Fane, Earl of Westmorland.  
John Egerton, Earl of Bridgwater.  
Charles Howard, Earl of Berkshire.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
George Savile, Viscount Halifax.  
Robert Paston, Viscount Yarmouth.

Charles Mohun, Lord Mohun.  
 Francis Newport, Viscount Newport.  
 Thomas Belasyse, Viscount Fauconberg.  
 Henry Sandys, Lord Sandys.  
 Philip Wharton, Lord Wharton.  
 Philip Stanhope, Earl of Chesterfield.  
 Henry Hyde, Earl of Clarendon.  
 George Booth, Lord Delamere.  
 Horatio Townshend, Lord Townshend.  
 William Petre, Lord Petre.  
 Charles North, Lord Grey of Rolleston.

## XLVIII.

JUNE 7, 1678.

The elder brother of the first Duke of Buckingham, John Villiers, was married to the only daughter of Chief Justice Coke by his second wife Elizabeth Cecil, daughter of the Earl of Exeter and widow of Sir William Hatton. Sir John Villiers was created Baron Villiers of Stoke Pogis and Viscount Purbeck. It is said that Lord Purbeck became insane. It is certain that his wife, who was married to him by force, committed adultery with Sir Robert Howard. She had a son, who was baptized under the name of Robert Wright, but was afterwards called Villiers, and as son of Lord Purbeck took part in the conveyance of certain lands. He married Elizabeth Danvers, the daughter of one of Charles the First's judges, took her name and disclaimed the peerage, sitting in the Convention of 1659 as member for Westbury. Summoned to the Upper House, he refused to attend, on the plea that he was a member of the Lower House. He did however ultimately attend, and asked pardon at the bar. He then, with the consent of Charles II, levied a fine of his titles in possession and remainder to the King. He died in 1675, and his eldest son Robert claimed the title of Viscount Purbeck. His claim was resisted, (1) on the ground of the fine, by which, as was contended, he was barred; (2) on that of his father's illegitimacy.

On the 22nd of March, Lord Anglesey protested against the Attorney-General being heard as to the fact and law of the case, in general terms. It was ordered that the case should be heard on the 8th of April, but the trial of the Earl of Pembroke for murder intervened, and it was put off to the 29th. But this day was occupied with the King's speech and the Dutch treaty, and it was again postponed till the 3rd of June and finally fixed for the 4th of June, when the counsel of the Duke of Buckingham and the petitioner were heard. On the 7th of June the House after debate resolved to proceed in this case upon the whole matter.

Whereupon the following protest was entered.

Before the question was put for proceeding in the case of the claim for the title of Viscount Purbeck, leave being asked and

granted to enter protests if it was carried in the affirmative; we accordingly do enter our dissent, because there being three points arising from the debate of the case;

The first of illegitimacy;

The second concerning the being of a patent of honour, which are matters of fact, and ought to be determined before the point of law, which is the third point, concerning the extinguishing of honour by a fine; which by this House, in a full assembly, hath been adjudged (*nemine contradicente*) cannot legally be done; and that we cannot, upon complicated and accumulative questions, give a resolution; nor hath the practice been so, but upon the case agreed, or single propositions, except where the House is unanimous in judgment; whereas in this case they appear yet much divided.

Aubrey de Vere, Earl of Oxford.  
 Theophilus Hastings, Earl of Huntingdon.  
 Arthur Annesley, Earl of Anglesey.  
 Charles Paulet, Marquis of Winchester.  
 William Russell, Earl of Bedford.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 John Egerton, Earl of Bridgwater.  
 James Compton, Earl of Northampton.  
 John Granville, Earl of Bath.  
 Thomas Culpeper, Lord Culpeper.  
 Gilbert Holles, Earl of Clare.

It does not appear from the Journals of the Lords that any formal vote had been come to on the power possessed by a peer to levy a fine on his honour till the 18th of June. It is of course possible that this protest was inserted eleven days after the date at which it appears in the Journals.

## XLIX.

JUNE 20, 1678.

On the 18th of June the Lords unanimously came to the following order: 'Forasmuch as, upon the debate of the petitioner's case, who claims the title of Viscount Purbeck, a question in law did arise, whether a fine levied to the King by a peer of the Realm of his title of honour can bar and extinguish that title; the Lords spiritual and temporal in Parliament assembled, upon very long debate, and having heard his Majesty's Attorney-General, are unanimously of opinion, and do resolve and adjudge, "That no fine now levied, or at any time hereafter to be levied, to the King, can bar such title of honour, or the right of any person claiming such title under him that levied or shall levy such fine." The debate was then adjourned to the 20th of June. On this day the

question ‘whether the petitioner had right by law to be admitted according to his claim,’ was not allowed to be put, and the question ‘whether the King shall be petitioned to give leave that a Bill may be brought in to disable the petitioner to claim the title of Viscount Purbeck,’ being affirmed, the following protest was entered.

The Lords proceeding this day, which was appointed, to give judgment in the case concerning the claim and right of Robert Viscount Purbeck to that title of honour, to them referred by his Majesty; and three questions being, after debate, propounded as follow :

1. That the petitioner hath right, by law, to be admitted according to his title.
2. That this question shall be now put.
3. That the King shall be petitioned to give leave that a Bill may be brought in to disable the petitioner to claim the title of Viscount Purbeck.

And leave being asked and given, before the putting of the said questions, to any Lords to enter their dissents and protestations to them, if they or any of them were resolved in the affirmative, as the second and last were; we whose names are underwritten do accordingly protest against the said resolutions, for the reasons following :

1st, The Lords being in judgment, as the highest court of England, in a case referred to them by his Majesty (and whereof they are the only proper judges) concerning the right of nobility claimed by a subject that is under no forfeiture, and wherein their Lordships had, in part, given judgment before, that he was not (nor could be) barred thereof by a fine and surrender of his ancestor; it was, as we humbly conceive, against common right and justice, and the orders of this House, not to put the question that was propounded for determining the right.

2ndly, The said claimant’s right (the bar of the fine of his ancestor being removed) did, both at the hearing at the bar and debate in the House, appear to us clear, in fact and law, and above all objections.

3rdly, His said right was acknowledged even by those Lords, who therefore opposed the putting of the main question for adjudging therefore, and carried the previous question (that it should not be put) because, in justice, it must inevitably (if it had been

put) have been carried in the affirmative, and his right thereby allowed.

4thly, By putting and carrying the third question concerning leave to bring a Bill to bar him, his right to the said title is confessed, for he cannot be debarred of anything which he hath not a right to; and this renders the proceedings in this case contradictory and inconsistent.

5thly, The petitioning the King to give leave for such a Bill to be brought in, is to assist one subject, viz. the Duke of Buckingham, against another, in point of right, wherein judges ought to be indifferent and impartial.

6thly, This way of proceeding is unprecedented, against the law and common right, as we humbly conceive, after fair verdicts, and judgments in inferior courts upon title of lands, which have long been in peace, and vested in the claimer by descent, without writ of error brought, or appeal, to suffer the same to be shaken or drawn in question by a Bill.

7thly, This way by Bill, in a case of nobility, is to admit the Commons with us into judicature of Peers.

8thly, It is to make his Majesty party in a private case against a clear right, to anticipate and pre-engage his judgment in a case, carried upon great division and difference of opinion in the House, and forestalls his Majesty's royal power and prerogative, which ought to be free, to assent or dissent to Bills when they shall be tendered to him by both Houses.

9thly, After so many years delay to give no answer to his Majesty's reference, nor judgment in the claimer's case, is a way in which the kings of this Realm have not been heretofore treated, nor the subjects dealt with.

10thly, We conceive this course, in the arbitrariness of it, against rules and judgments of law, to be derogatory from the justice of Parliament, of evil example, and of dangerous consequence both to peers and commoners.

Aubrey de Vere, Earl of Oxford.  
Arthur Annesley, Earl of Anglesey.  
Thomas Osborne, Earl of Danby.  
James Compton, Earl of Northampton.  
Thomas Culpeper, Lord Culpeper.  
Robert Carey, Lord Hunsdon.  
Charles West, Lord Delawarr.

## L.

JULY 9, 1678.

The petition to the King, in the case of Lord Purbeck, to give leave to bring in a Bill to disable Robert Villiers from claiming the title of Viscount Purbeck was reported on the 9th of July, and the question whether it should be presented was affirmed.

On this the following protest, said in the original to be written in the hand of Lord Anglesey, then Lord Privy Seal, was inserted in the Journals.

## Dissentient.

For these reasons: 1st, That this is a transition from our judicature in a case of nobility, wherein the Lords are sole judges, to the exercise of the legislature, wherein the Commons have equal share with us, and admits them judges of peerage, which I conceive ought not to be, if he be a peer, as seems implied, by proposing a law to bar his title; and there is no need of a law if he be no peer.

2ndly, If a Bill come in, the case must be heard again, and then judgment ought to be given, which (if against him) the Commons must credit upon the proofs made here, where only witnesses are sworn; and therefore judgment here ought to be final.

3rdly, This petition is no answer to his Majesty's reference, and we leave him in uncertainty, when he asks our opinion; or desire the royal assent to nothing, if he hath no title to be barred.

4thly, If the Commons should reject a Bill sent to them, they establish him a peer, by judging it injurious to bar him by a law, and so would seem more tender of peerage than we.

5thly, Leave is asked of his Majesty to bring in a Bill, when every peer hath right to do it in this case, if he conceive himself aggrieved by a false claim of Honour; and therefore several lords have been admitted parties against him upon former hearings, and judgment given, in part, for him by a vote, that he is not barred by the fine of his father.

6thly, It seems against common right to bar any by Bill, who claims a legal title, without forfeiture be in case, and if so there needs no Bill.

Arthur Annesley, Earl of Anglesey.  
James Compton, Earl of Northampton.

The petition was presented to the King, who answered on the 11th of July 'that he would take it into consideration.' No further steps were taken in the matter, and the petitioner, his son, and his nephew claimed the title, and after the death of the Duke of Buckingham in 1687, that of the Earl of Buckingham. But they were never summoned to Parliament.

## LI.

DECEMBER 6, 1678.

The House of Commons petitioned the King to issue a proclamation for the disarming all Popish recusants convict, and to oblige them in recognisances with sufficient bail, to keep the peace, and to imprison them in default; and desired the concurrence of the Lords. It will be remembered that this address was drawn up and presented at the crisis of Oates' Plot. The Lords agreed.

The following protest is inserted.

It is humbly conceived to be contrary to, and against law in several particulars, and both unjustifiable and dangerous for those that shall put it in execution.

James Compton, Earl of Northampton.  
 Arthur Annesley, Earl of Anglesey.  
 Robert Ferrers, Lord Ferrers of Chartley.  
 John Frescheville, Lord Frescheville of Staveley.

## LII.

MARCH 25, 1679.

The articles of Lord Danby's impeachment, drawn up by the House of Commons, and presented to the Lords on the 23rd of December 1678, are to be found in the Journal for that day. On a motion that Lord Danby should withdraw, the motion is negatived, though not without a division and a protest of eighteen Peers. On the 25th of March a Bill was read a second time for disabling Lord Danby, and committed.

On this the following protest is inscribed in the Journals.

1st, Because no summons or hearing of the party is first directed, which, by the essential forms of justice, ought to be.

2ndly, Because it is conceived this will be error.

3rdly, Because it is a dangerous precedent against all the Peers, to have so penal a Bill precipitated.

4thly, Because no committee can proceed on any Bill without hearing parties, and no Peer is to be tried in Parliament but by the whole House of Peers.

Arthur Annesley, Lord Anglesey.

## LIII.

MAY 2, 1679.

On the 2nd of May, 1679, a Bill for freeing the City of London and parts adjacent from Popish inhabitants was read a third time. The object of this Bill appears to have been the banishment of Roman Catholics to a distance of twenty miles or more from London. It passed both Houses, but was lost by the dissolution which took place on the 12th of July; the House having sat from the 6th of March.

Because this House hath sent down a Bill to the House of Commons, for the better discovery and speedy conviction of Popish recusants, wherein the conviction of recusancy was for refusing the test, and not the oaths; the same Bill was sent down from this House about the end of the last Parliament.

As also because there are thousands of Dissenters that will be faithful, even to death, against the common enemies the Papists, which, by the addition of the oaths to the test, may be tempted to think themselves, in interest, obliged to take the Papists part against us.

Anthony Ashley Cooper, Earl of Shaftesbury (Lord President).  
 Anthony Grey, Earl of Kent.  
 William George Richard Stanley, Earl of Derby.  
 Theophilus Hastings, Earl of Huntingdon.  
 George Berkeley, Lord Berkeley.  
 Thomas Grey, Earl of Stamford.  
 George Booth, Lord Delamere.  
 James Brydges, Lord Chandos.

## LIV.

NOVEMBER 15, 1680.

A Bill was brought from the Commons ‘For securing the Protestant religion, by disabling James, Duke of York, to inherit the Imperial crown of England and Ireland, and the Dominions and Territories thereunto belonging.’ The Bill was rejected on the first reading; twenty-four Peers protesting without reasons. The following reason is given by another Peer.

Because rejected upon the first reading.

Thomas Crewe, Lord Crewe.

## LV.

NOVEMBER 23, 1680.

A motion was made on this day, ‘That there shall be a Committee appointed, in order to join with a Committee of the House of Commons to debate matters concerning the state of the Kingdom,’ and the motion was negatived.

The following protest was thereupon entered.

Because we are fully convinced, in our judgments, that the conferring of the Lords with the Commons, by a joint Committee of both Houses, is the likely way to produce a good understanding between them, which we take to be most necessary at this time for the safety of the King’s person, and the security of the Protestant religion against the bloody designs of the Papists, as also for the redress of other grievances, which the nation at this time lies under.

George Villiers, Duke of Buckingham.  
 James Cecil, Earl of Salisbury.  
 William Russell, Earl of Bedford.  
 Charles Gerard, Earl of Macclesfield.  
 Thomas Grey, Earl of Stamford.  
 James Scott (Fitzroy), Duke of Monmouth.  
 Anthony Grey, Earl of Kent.  
 Arthur Capell, Earl of Essex.  
 Gilbert Holles, Earl of Clare.  
 Charles Fane, Earl of Westmorland.  
 Philip Wharton, Lord Wharton.  
 William Paget, Lord Paget.  
 Robert Spencer, Earl of Sunderland.  
 John Lovelace, Lord Lovelace.  
 John Sheffield, Earl of Mulgrave.  
 George Booth, Lord Delamere.  
 Henry Herbert, Lord Herbert of Chirbury.  
 Fulke Greville, Lord Brooke.

## LVI.

NOVEMBER 25, 1680.

Joscelyn Percy, eleventh Earl of Northumberland, died in May 1670 leaving an only daughter, Elizabeth, who married Henry Cavendish, Earl of Ogle, son of Henry, Duke of Newcastle, in 1679, when she was not fourteen years old. She was afterwards married or contracted to Thomas Thynne of Longleat (Tom of Ten thousand), who was assassinated by

Konigsmark in February 1682; and finally to Charles Seymour, Duke of Somerset (the proud Duke). As early as February the 18th, 1673, a person named James Percy called himself Earl of Northumberland, and complaint was thereon made by the Countess dowager (Elizabeth, daughter of Thomas Wriothesly, Earl of Southampton) of Northumberland, to the effect that he, a trunkmaker of Dublin, had assumed the title of Earl of Northumberland and Lord Percy, to the dishonour of her family. Percy's petition was read on the 20th of February, considered and dismissed. His petition was further considered on the 28th of March and dismissed again, the House resolving at the time to consider what further proceedings shall be taken against him concerning his imposture; Lord Anglesey dissenting. On the 28th of May of the same year, the same person brings an action of ejectment against Lady Clifford, who prays privilege against him, which is granted. On the 25th of November, 1680, he again desires a day for hearing his petition, and the petition is rejected, on which occasion the subjoined protest is recorded. Complaint is made against the same person on the 1st of June, 1685, by Charles, Duke of Somerset, and Elizabeth his Duchess; and Percy on the 12th of June again 'presents his petition of complaint with his other petitions, and a prayer that they may be read, and that justice may be had, and he shall ever pray: Equal justice do, or tell the reason why.' On the 15th of May, 1689, he again petitions the Lords; who 'refer his petition to the Committee of Privileges, to consider thereof, and of the several reflections in it, and what is fit to be done to prevent disturbance by the same James Percy, who hath often troubled the House in this matter.' On the 28th of June the Earl of Bridgwater reported to the House on the claim, in which it seems 'were several scandalous reflections on the Duke and Duchess of Somerset, which their lordships (the Committee) leave to the censure of the House.' On this the Lords order counsel for both, and on the 10th of June order 'that copies of the depositions of witnesses taken in the Courts of Chancery, Exchequer, and Courts of Chivalry for or on behalf of James Percy, be delivered to him, in order to their being produced at the hearing at the Bar (on the 11th of June).' On this day counsel is heard on both sides, and the Lords decide that Percy's pretensions are groundless, false, and scandalous, and order and adjudge 'that he be brought before the four Courts in Westminster Hall, wearing a paper on his breast in which these words shall be written, "The false and impudent pretender to the Earldom of Northumberland." On the 12th of June, Percy, having suffered the judgment of the House, is discharged from restraint.

Dissentient for these reasons.

1st, Because the claim brought by Mr. Percy can be heard, examined and adjudged only in this House.

2ndly, It is a right due to the subject to petition this House, and the cause is not to be under prejudice or rejected till heard.

3rdly, It seems unprecedented, and against common right and the constant course of Parliamentary justice.

4thly, By such a way of proceeding he is barred of his appeal from a dismiss in a former Parliament, which he can only have in this Parliament, before the grounds thereof are so much as examined.

Arthur Annesley, Earl of Anglesey.

## LVII.

JANUARY 7, 1681.

Certain articles of impeachment were brought up to the Lords from the House of Commons by Lord Cavendish, charging Sir Wm. Scroggs, Chief Justice of the King's Bench, with high treason, and with other high crimes and misdemeanours. These articles are given at length in the Lords' Journal of the 7th of January, and the question was put whether he should be committed. The motion was negatived by moving the previous question, and the following protest was entered.

1st, We that are of opinion, that he ought to be committed, are deprived of giving our votes, by putting only the question of bail, we being rather for bail than to let him go altogether free.

2ndly, We are of opinion, that this matter hath been twice adjusted betwixt both Houses, viz. in the case of the Earl of Clarendon, and the case of the Earl of Danby.

Besides, we did think it very unsafe, and not agreeable to justice, that he should be at large and execute his place of Lord Chief Justice, whilst he lies under the charge of an impeachment of high treason.

Lastly, It may deter the witnesses, when they shall see him in such great power and place, whom they are to accuse.

Anthony Grey, Earl of Kent.  
 Theophilus Hastings, Earl of Huntingdon.  
 James Scott (Fitzroy), Duke of Monmouth.  
 James Cecil, Earl of Salisbury.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Gilbert Holles, Earl of Clare.  
 William Russell, Earl of Bedford.  
 Arthur Capell, Earl of Essex.  
 Thomas Grey, Earl of Stamford.  
 Charles Cornwallis, Lord Cornwallis.  
 Charles Gerard, Earl of Macclesfield.  
 Forde Grey, Lord Grey de Warke.  
 William Paget, Lord Paget.  
 Henry Herbert, Lord Herbert of Chirbury.

Philip Wharton, Lord Wharton.  
 Robert Montague, Earl of Manchester.  
 James Howard, Earl of Suffolk.  
 Thomas Savage, Earl Rivers.  
 Edward Watson, Lord Rockingham.  
 Thomas Howard, Lord Howard of Escrick.  
 Thomas Crewe, Lord Crewe.

## LVIII.

MARCH 26, 1681.

The House of Commons inform the Lords through Sir Leoline Jenkins and others, that they have resolved to impeach Edward Fitzharris of treason, and state that they will within convenient time exhibit the articles of the charge against him. After a long debate the Lords determine that ‘Fitzharris shall be proceeded with according to the course of Common Law, and not by way of impeachment in Parliament at this time.’

To this resolution the following protest is subjoined.

## Dissentient.

Because that in all ages it hath been an undoubted right of the Commons to impeach before the Lords any subject for treasons, or any crime whatsoever; and the reason is, because great offences, that influence the Government, are most effectually determined in Parliament.

We cannot reject the impeachment of the Commons, because that suit or complaint can be determined nowhere else; for if the party impeached should be indicted in the King’s Bench, or in any other court, for the same offence, yet it is not the same suit; for an impeachment is at the suit of the people, and they have an interest in it; but an indictment is at the suit of the King: for one and the same offence may entitle several persons to several suits; as, if a murder be committed, the King may indict at his suit; or the heir, or the wife of the party murdered, may bring an appeal, and the King cannot release that appeal, nor his indictment prevent the proceedings in the appeal, because the appeal is the suit of the party, and he hath an interest in it.

It is, as we conceive, an absolute denial of justice, in regard (as ’tis said before) the same suit can be tried nowhere else: the House of Peers, as to impeachments, proceed by virtue of their judicial power, and not by their legislative; and as to that, act as a court of record, and can deny suitors (especially the Commons of England)

that bring legal complaints before them, no more than the justices of Westminster Hall, or other courts, can deny any suit or criminal cause that is regularly commenced before them.

Our law saith, in the person of the King, *Nulli negabimus justitiam,*  
We will deny justice to no single person ; yet here, as we apprehend,  
justice is denied to the whole body of the people.

And this may be interpreted an exercising of an arbitrary power, and will, we fear, have influence upon the constitution of the English Government, and be an encouragement to all inferior courts to exercise the same arbitrary power, by denying the presentments of grand juries, &c., for which at this time the Chief Justice stands impeached in the House of Peers.

This proceeding may misrepresent the House of Peers to the King and people, especially at this time, and the more in the particular case of Edward Fitzharris, who is publicly known to be concerned in vile and horrid treasons against his Majesty, and a great conspirator in the Popish plot to murder the King, and destroy and subvert the Protestant religion.

Anthony Grey, Earl of Kent.  
Theophilus Hastings, Earl of Huntingdon.  
James Scott (Fitzroy), Duke of Monmouth.  
William Russell, Earl of Bedford.  
James Cecil, Earl of Salisbury.  
William Paget, Lord Paget.  
Gilbert Holles, Earl of Clare.  
Arthur Capell, Earl of Essex.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Robert Spencer, Earl of Sunderland.  
Thomas Grey, Earl of Stamford.  
Philip Wharton, Lord Wharton.  
Charles Mordaunt, Viscount Mordaunt.  
Forde Grey, Lord Grey de Warke.  
Charles Cornwallis, Lord Cornwallis.  
John Lovelace, Lord Lovelace.  
Charles Gerard, Earl of Macclesfield.  
Henry Herbert, Lord Herbert of Chirbury.  
Charles Fane, Earl of Westmorland.  
Thomas Crewe, Lord Crewe.

Fitzharris was subsequently tried before the King's Bench in Easter Term, 1681, and entered a plea against the jurisdiction of the Court, on the ground that proceedings were pending against him before the Lords. This plea was adjudged to be insufficient, and Fitzharris was proceeded against at common law on the 9th of June, 1681, and convicted. His

wife exhibited great courage and energy on his behalf. The charge against Fitzharris was that of libel. The statements, however, which the libel contained are true.

## LIX.

MAY 22, 1685.

On the 19th of March, 1679, the Lords agreed to the following order. 'That in all cases of appeals and writs of error they continue, and are to be proceeded on *in statu quo*, as they stood at the dissolution of the last Parliament, without beginning *de novo*, and that the dissolution of the last Parliament doth not alter the state of the impeachments brought up by the Commons in that Parliament.' On the 22nd of May, 1685, the Lords reversed this order, and the following protest was recorded.

According to the right of Peers to enter their dissent and protestation against any vote, propounded and resolved upon any question in Parliament, we do enter our dissent and protestation to the aforesaid vote or resolution, for these reasons, among many others:

1st, Because it doth, as we conceive, extrajudicially, and without a particular cause before us, endeavour an alteration in a judicial rule and order of the House in the highest point of their power and judicature.

2ndly, Because it shakes and lays aside an order made and renewed upon long consideration, debate, report of committees, precedents, and former resolutions, without permitting the same to be read, though called for by many of the Peers, and against weighty reasons, as we conceive, appearing for the same, and contrary to the practice of former times.

3rdly, Because it is inherent in every court of judicature to assert and preserve the former rules of proceedings before them; which therefore must be steady and certain, especially in this High Court, that the subject, and all persons concerned, may know how to apply themselves for justice; the very Chancery, King's Bench, &c., have their settled rules and standing orders, from which there is no variation.

Arthur Annesley, Earl of Anglesey.  
Gilbert Holles, Earl of Clare.  
Thomas Grey, Earl of Stamford.

## LX.

MAY 25, 1685.

In the close of the year 1680, Elizabeth Hervey, the widow of John Hervey, petitioned the Lords to the effect that she had a personal estate of £30,000, or her husband had in trust for her and her heirs, of manors, &c., in fee simple, of the yearly value of £1400; that her husband made a will to which she and Sir Thomas Hervey were executors, and that her husband's brother, the said Sir Thomas Hervey, had obtained a decree in Chancery for her to account to him, and deliver over to him, all the personal estate of her husband. On the 23rd of March, 1681, she again complains that she has, in accordance with the order of the House, entered into a recognizance, and that Sir Thomas Hervey was ordered to put in an answer, which he had failed to do, and she prays that he be ordered to put in his answer. The case was referred to the Committee of Privileges, which was to sit on Monday, the 28th of March; but on that day the Parliament was dissolved, and no other was assembled during the reign of Charles. On the 24th of May, 1685, Mrs. Hervey complained again. On the next day the House resolved that the order drawn between the parties should not stand, and that the House will not proceed on Mrs. Hervey's petition 'till she appears personally, having the protection of the House, or gives sufficient security to perform such order as the House shall make.' On this the following protest is entered.

I do dissent to this vote, being a heavy and unprecedented obstruction to judicature and appeals.

Arthur Annesley, Earl of Anglesey.

## LXI.

JUNE 3, 1685.

The trial of William Howard, Viscount Stafford, for participation in Oates' Plot, took place on the 30th of November, 1680. The particulars of the trial are to be found in the State Trials, vol. iii. p. 101; Heneage Finch, Lord Finch of Daventry, being High Steward on the occasion. The verdict was given on the 7th of December; 55 peers voting him guilty, 31 not guilty. On the accession of James, a Bill was brought into the Lords, to reverse his attainder, and the Bill passed through the Committee and was engrossed.

On this occasion the following protest was entered.

Dissentient.

1st, Because the assertion in the Bill, of its being now manifest that the Viscount Stafford died innocent, and that the testimony on which he was convicted was false, which are the sole grounds

and reasons given to support the Bill, are destitute of all proof, warrant, or testimony of witness, or matter of record before us.

2ndly, That the Record of the King's Bench read at the Committee concerning the conviction, last term, of one of the witnesses for perjury in collateral points of proof, of no affinity to the Lord Stafford's trial, and given several years before it is conceived, can be no ground to invalidate the testimony upon which the said Viscount was convicted, which could never legally be by one witness, and was, in fact, by the judgment of his Peers, on the evidence of at least three.

3rdly, It is conceived, the said judgment in the King's Bench and the whole proceedings, were unprecedented, illegal and unwarrantable, highly derogatory to the honour, judicature, and authority of this Court, who have power to question and punish perjuries of witnesses before them, and ought not to be imposed upon by the judgments of inferior courts, or their attainters of a Peer invalidated by implication; and the Popish plot so condemned, pursued, and punished by his Majesty and four Parliaments, after public solemn devotion through the whole Kingdom, by authority of Church and State, to be eluded to the arraignments and scandal of the government, and only to the restoring of the family of one Popish Lord; and all this being without any matter judicially appearing before us to induce the same, and the records of that trial not suffered to be read for information of the truth before the passing of the Bill.

Lastly, For many other weighty reasons offered and given by divers Peers in the two days' debate of this Bill, both in the Committees and the House.

Arthur Annesley, Earl of Anglesey.

## LXII.

JUNE 4, 1685.

The Bill to reverse Lord Stafford's attainder was read a third time and passed on the 4th of June, and sent to the House of Commons, where it dropped, and the following protest was entered.

I, Anglesey, protest against this Bill's passing, for the same reasons entered the day before.

I protest against this Bill, because the preamble was not amended, and no defect in point of law alleged as a reason for the reversal of the attainder.

Gilbert Holles, Earl of Clare.  
Thomas Grey, Earl of Stamford.  
Ralph Eure, Lord Eure.

## LXIII.

MARCH 6, 1689.

A Bill for better regulating the trials of Peers was introduced several times into the Lords during the reign of Charles II; was often passed, and sent to the House of Commons, where it was as regularly dropped.

On the 6th of March the Bill was read a third time and passed, on which the following Peers entered their protest.

Leave was given to any Lords to enter their dissents; and accordingly these Lords following entered their dissents in the reasons following:

1st, Because nothing ever was or may be put into an Act of Parliament, that can reflect so much upon the honour of the peerage as this will.

2ndly, Because this sets the honour of the Peers and the Commons upon an equal foot.

3rdly, Because such persons as may have causes to be heard at the Bar of this House will not be so confident of the justice of the Peers, and consequently be jealous of the right that may be expected upon impeachments.

4thly, Because this strikes at the root of all the privileges of the Peers, most of which they claim by reason of the great regard that the law has to the honour and integrity of the Peers above that of the Commons; the statute *de Scandalis Magnatum* being enacted for that reason only.

5thly, Because it will be, in some sort, a mark of reproach upon every Peer who shall be challenged, unless there be very great and apparent cause for it.

6thly, Because this will tend to maintain feuds and animosities amongst the Peers.

7thly, Because, at this time, it is unreasonable, considering the late disputes and divisions that have been in this House.

8thly, Because the honour of every man, much more of a Peer, is, or ought to be, more valuable than his life.

John West, Lord Delawarr.  
 Henry Booth, Lord Delamere.  
 Charles Paulet, Marquis of Winchester.  
 Charles North, Lord North and Grey of Rolleston.  
 Robert Bertie, Earl of Lindsey (Great Chamberlain).  
 Thomas Grey, Earl of Stamford.  
 William Russell, Earl of Bedford.  
 Henry Howard, Duke of Norfolk (Earl Marshal).  
 Thomas Lucas, Lord Lucas.  
 William Craven, Earl Craven.  
 William Pierrepont, Earl of Kingston.  
 Henry Compton, Bishop of London.  
 Thomas Herbert, Earl of Pembroke.  
 John Berkeley, Lord Berkeley of Stratton.  
 Charles Montague, Earl of Manchester.  
 George Compton, Earl of Northampton.  
 Thomas Parker, Lord Morley and Monteagle.

## LXIV.

MARCH 21, 1689.

In the Bill for abrogating the oaths of allegiance and supremacy, and establishing others in their place, I William and Mary, cap. viii, a clause was proposed to the effect that so much of the Act 25 Charles II, cap. xi (an Act for preventing dangers which may happen from Popish recusants), as concerneth the receiving the Sacrament of the Lord's Supper according to the usage of the Church of England, to the intents and purposes only in the said Act required, shall be henceforth wholly repealed. This clause, suggested by the Committee, was rejected, and the following protest inserted in the Journals.

Leave was given by the House to such Lords as will, to enter their dissents, and accordingly these Lords following do enter their dissents, for the reasons following :

1st, Because a hearty union amongst Protestants is a greater security to the Church and State than any test that can be invented.

2ndly, Because this obligation to receive the Sacrament is a test on Protestants rather than on the Papists.

3rdly, Because so long as it is continued, there cannot be that hearty and thorough union amongst Protestants as has always been wished, and is at this time indispensably necessary.

4thly, Because a greater caution ought not to be required from such as are admitted into offices than from the members of the two Houses of Parliament, who are not obliged to receive the Sacrament to enable them to sit in either House.

Henry Booth, Lord Delamere.

Thomas Grey, Earl of Stamford.

Charles North, Lord North and Grey.

Philip Stanhope, Earl of Chesterfield.

Forde Grey, Lord Grey de Warke.

Philip Wharton, Lord Wharton.

John Lovelace, Lord Lovelace.

John Vaughan, Lord Vaughan (Earl of Carbery).

## LXV.

MARCH 23, 1689.

A member of the House offered a clause to be added as a rider to the Bill for abrogating the oaths of Supremacy and Allegiance, and appointing other oaths ; proposing ‘that any person or persons taking the oaths, &c., to be capable of, and to use, and exercise any office, employment, or place of trust, or receive and pay salary for, or wages from, his Majesty, that within one year next before or within one year next after his admission or entrance thereunto, or of his having such pay, salary, fee, or wages, hath received or shall receive the Sacrament of the Lord’s Supper, according to the usage of the Church of England, or not according to the usage of the Church of England, in any Protestant congregation, &c.’ The purpose of the rider was, to prolong the period during which the Act of Conformity should be accomplished, and to give as much validity to the Sacrament in Protestant dissenting places of worship as to the same rite in the churches of the Establishment. The motion was rejected, and the following protest is entered.

Leave was given to such Lords as will, to enter their dissents, and these Lords do enter their dissents in the reasons following :

1st, Because it gives great part of the Protestant free men of England reason to complain of inequality and hard usage, when they are excluded from public employments by a law, and also, because it deprives the King and Kingdom of divers men fit and capable to serve the public in several stations, and that for a mere scruple of conscience, which can by no means render them suspected, much less disaffected, to the government.

2ndly, Because his Majesty, as the common and indulgent father of his people, having expressed an earnest desire of liberty for tender consciences to his Protestant subjects ; and my Lords the

Bishops having, divers of them, on several occasions professed an inclination, and owned the reasonableness of such a Christian temper ; we apprehend it will raise suspicions in men's minds of something different from the case of religion or the public, or a design to heal our breaches, when they find that by confining secular employments to ecclesiastical conformity, those are shut out from civil affairs, whose doctrine and worship may be tolerated by authority of Parliament, there being a Bill before us, by order of the House, to that purpose ; especially when, without this exclusive rigour, the Church is secured in all her privileges and preferments, nobody being hereby let into them who is not strictly conformable.

3rdly, Because to set marks of distinction and humiliation on any sort of men, who have not rendered themselves justly suspected to the government, as it is at all times to be avoided by the makers of just and equitable laws, so may it be particularly of ill effect to the reformed interest at home and abroad, in this present conjuncture, which stands in need of the united hands and hearts of all Protestants, against the open attempts and secret endeavours of a restless party, and a potent neighbour, who is more zealous than Rome itself to plant Popery in these kingdoms, and labours with his utmost force to settle his tyranny upon the ruins of the Reformation all through Europe.

4thly, Because it turns the edge of a law (we know not by what fate) upon Protestants and friends to the government, which was intended against Papists, to exclude them from places of trust, as men avowedly dangerous to our religion and government ; and thus the taking the Sacrament, which was enjoined only as a means to discover Papists, is now made a distinguishing duty amongst Protestants, to weaken the whole by casting off a part of them.

5thly, Because mysteries of religion and divine worship are of divine original, and of a nature so wholly distant from the secular affairs of public society, that they cannot be applied to those ends ; and therefore the Church, by the law of the Gospel, as well as common prudence, ought to take care not to offend either tender consciences within itself, or give offence to those without, by mixing their sacred mysteries with secular interests.

6thly, Because we cannot see how it can consist with the law of God, common equity, or the right of any free-born subject,

that any one be punished without a crime. If it be a crime not to take the Sacrament according to the usage of the Church of England, every one ought to be punished for it, which nobody affirms; if it be no crime, those who are capable, and judged fit for employment by the King, ought to be punished with a law of exclusion, for not doing that which it is no crime to forbear.

If it be urged still, as an effectual test to discover and keep out Papists, the taking the Sacrament in those Protestant congregations, where they are members and known, will be at least as effectual to that purpose.

Aubrey de Vere, Earl of Oxford.  
 Charles Mordaunt, Viscount Mordaunt.  
 John Lovelace, Lord Lovelace.  
 Ralph Montague, Lord Montague.  
 Philip Wharton, Lord Wharton.  
 William Paget, Lord Paget.

## LXVI.

APRIL 5, 1689.

On Monday, the 11th of March, 1689, a Bill was introduced into the House of Lords by the Earl of Nottingham, and read for the first time, entitled ‘An Act for uniting their Majesty’s Protestant subjects.’ It was read a second time on Thursday, the 14th of March, and a proposition that it should be committed to a Committee of the whole House was negatived. A large Committee, consisting of all the Lords present, was however appointed, who were to hear evidence and report. On the 28th of March the Lords ordered that ‘the debate on the report be, and is hereby adjourned, to be taken up the first day of the meeting of the House after the recess.’ The debate accordingly took place on the 4th of April. On this occasion a division was taken on leaving out a clause affirming ‘the indifferency of the posture at the receiving of the Sacrament,’ and the votes being equal, the negative was assumed and the clause retained. Again, on the 5th of April the question being raised whether the words ‘and laity’ should be inserted in the description of the persons eligible to a Commission, to be appointed by the King for discussing points of difference between Churchmen and Dissenters, the votes were equal, and the following protest was entered by some among the Lords who voted for a mixed Commission.

1st, Because the Act itself being, as the preamble sets forth, designed for the peace of the State, the putting the clergy into the Commission, with a total exclusion of the laity, lays this humiliation on the laity, as if the clergy of the Church of England

were alone friends to the peace of the State, and the laity less able or less concerned to provide for it.

2ndly, Because the matters to be considered being barely of human constitution, viz. the Liturgy and Ceremonies of the Church of England, which had their establishment from King, Lords Spiritual and Temporal, and Commons assembled in Parliament, there can be no reason why the Commissioners for altering anything in that civil constitution should consist only of men of one sort of them, unless it be supposed that human reason is to be quitted in this affair, and the inspiration of spiritual men to be alone depended on.

3rdly, Because, though upon Romish principles, the clergy may have a title alone to meddle in matters of religion, yet with us they cannot, where the Church is acknowledged and defined to consist of clergy and laity; and so these matters of religion which fall under human determination, being properly the business of the Church, belong equally to both; for in what is of divine institution, neither clergy nor laity can make any alteration at all.

4thly, Because the pretending that differences and delays may arise from mixing laymen with ecclesiastics, to the frustrating the design of the Commission, is vain and out of doors; unless those that make use of this pretence suppose that the clergy part of the Church, have distinct interests or designs from the lay part of the same Church; and this will be a reason, if good, why one or other of them should quit the House, for fear of obstructing the business of it.

5thly, Because the Commission being intended for the satisfaction of Dissenters, it would be convenient that laymen of different ranks, nay perhaps of different opinions too, should be mixed in it, the better to find expedients for that end, rather than clergymen alone of our Church, who are generally observed to have very much the same way of reasoning and thinking.

6thly, Because it is the most ready way to facilitate the passing the alterations into a law, that lay Lords and Commons should be joined in the Commission, who may be able to satisfy both Houses of the reasons upon which they were made; and thereby remove all fears and jealousies ill men may raise against the clergy, of their endeavouring to keep up without grounds a distinct interest

from that of the laity, whom they so carefully exclude from being joined with them in consultations of common concernment, that they will not have those have any part in the deliberation, who must have the greatest in determining.

7thly, Because such a restrained Commission lies liable to this great objection, that it might be made use of to elude repeated promises, and the present general expectation of compliance with tender consciences, when the providing for it is taken out of the ordinary course of Parliament, to be put into the hands of those alone who were latest in admitting any need of it, and who may be thought the more unfit to be the sole composers of our differences, when they are looked upon by some as parties.

Lastly, Because, after all, this carries a dangerous supposition with it, as if the laity were not a part of the Church, nor had any power to meddle in matters of religion ; a supposition directly opposite both to the constitution of Church and State, which will make all alterations utterly impossible, unless the clergy alone be allowed to have power to make laws in matters of religion ; since what is established by law cannot be taken away but by consent of laymen in Parliament ; the clergy themselves having no authority to meddle in this very case, in which the laity is excluded by this vote, but what they derive from lay hands.

Charles Paulet, Marquis of **Winchester**.

Charles Mordaunt, Viscount **Mordaunt**.

John Lovelace, Lord **Lovelace**.

I dissent for this and the other reasons :

Because it is contrary to three statutes made in the reign of Henry the VIIIth, and one in Edward the VIth, which empowers thirty-two Commissioners to alter the canon and ecclesiastical laws, &c., whereof sixteen to be of the laity, and sixteen of the clergy.

Thomas Grey, Earl of **Stamford**.

On the 6th of April the rest of the report was agreed to, and on the 8th of April the Bill passed the Lords. It was read the first time in the Commons on the 9th of April, and ordered to be read a second time on the 16th of April. It was not however read on that day, and was subsequently dropped. The protest was printed and circulated as a pamphlet. See Bodley, Pamphlets 196. For an account of the clauses in the Bill see Macaulay, vol. ii. p. 468. The original Bill is in the Lords' Archives.

## LXVII.

APRIL 20, 1689.

An attempt was made to relax the terms of the Bill for abrogating the oaths of supremacy and allegiance, and substituting other oaths in favour of the non-juring bishops and clergy, and a conference was held with the Commons on the 18th of April. On the 20th of April the views of the Commons were reported to the Lords by Lord Godolphin. They insist that it is part of public policy to exact an oath of allegiance, that this is especially due from officials in the Church, and those engaged in the education of the youth, that oaths should be taken publicly, that the penalty for not taking the oath should cause it to be taken, that the Commons have shown all gentleness to the clergy (the Act gives them six months grace) that a distinction between ecclesiastical and lay obligations is indefensible, and that it might endanger the new settlement to permit one. The Lords, however, maintained their own views, and the following protest is entered.

The bishops and clergy not to be excused from taking the oaths of allegiance.

1st, Because by the same reason that any part of the subjects may be excused from giving assurance of their allegiance and fidelity to the government, all may, and the government will be left perfectly precarious.

2ndly, Because the clergy, and especially the bishops, receiving their benefices, dignities, and preferments from the public, ought to be the first and farwardest, by their doctrine and example, to teach others their obligations to be zealous in preserving the government, as well as religion established by law.

3rdly, Because the pretence of scruple and tenderness of conscience can have no other foundation in the present case, but the supposition of some former obligation, no one ever scrupling to give all manner of pledges of his allegiance, where he thought it due; those therefore that scruple ought the more to be pressed, and the sooner brought to the test, unless any one can think it reasonable the government should favour, encourage and indulge those that will not give the usual security that they are not enemies to it.

4thly, Because however the King may, that part of the people who have sworn allegiance to him cannot have reason to be satisfied, when they see another part of the nation under looser obligations to the government than they; nothing being so apt to raise fears,

jealousies, and disorders in a state, as unnecessary distinctions, or any cause of suspicion of want of unanimity or fidelity among themselves in the great concernments of the Kingdom, especially in the titles of Crowns, and at such time as this, when we are entering into war with a potent enemy, who openly owns and supports a contrary title.

5thly, Because it will discourage our allies, and give them a lower opinion of our King's interest in his people or authority over them, than is for the advantage of this Kingdom in particular, or the Protestant religion through Europe, when they shall understand, that those that are looked on to be directors of other men's consciences, cannot bring their own to acknowledge him in this first and fundamental act of obedience ; and what must they conclude, when they hear that the Parliament hath dispensed with such an exemplary part of the nation in a business of such moment ?

6thly, Because it may be of ill consequence, if the Parliament should set anything like a mark of disaffection to the government on that sacred order, by allowing them now a dispensation from taking a very moderate oath of allegiance, who, in a late reign, were too forward and zealous by addresses, preaching and promoting new oaths, to carry loyalty and obedience to monarchy to a pitch unknown to our ancient laws or former ages.

7thly, Because there being no other assurance of any one owning himself a subject to any government, but either acting under or swearing to it, it is very necessary that those who forbear to act should, of all others, be most strictly required to take the oaths, that the public might have that security of their allegiance, from those that refuse the others.

8thly, Because it is unreasonable that, for a part of the clergy, the whole laity and clergy should be exposed to the inconvenience of want of justice, and the dangers of disorders for want of settling the Militia ; the renewing of all commissions being delayed, to the great prejudice of the government and the people, till this act be passed : and therefore we do not see why this House should not comply with the Commons in the present necessity, though their vote be hard on a part of the subjects ; whereas the utmost that can be pretended in this case is only contending for an extraordinary favour, and an unheard-of allowance to some scrupulous men.

9thly, Because it is what neither history can parallel, nor any

policy justify, to allow any part of the people who claim protection from the government, to be excused from giving the common and necessary assurances of allegiance and fidelity to it; and it is hard to think, how any one that intends to be faithful to it, should come so near renouncing the government, as to desire to be dispensed with from being under the same ties with others, their fellow-subjects, not to do so.

Charles Gerard, Earl of **Macclesfield**.

Charles Mordaunt, Earl of **Monmouth**.

The other proceedings in this matter are to be found in the Lords' Journals of the 22nd and 23rd of April, and in Parliamentary History, vol. v. p. 227. Ultimately the Lords gave way in all substantive particulars.

## LXVIII.

MAY 25, 1689.

Titus Oates, who had previously sought to obtain a reversal of the sentence passed on him in connexion with his plot, presented a petition on the 25th of May, recounting the leading circumstances of the case, and praying relief. This the House voted to contain matter tending to a breach of the privilege of the House.

To this vote the following protest was entered.

1st, For that the matter resolved to be a breach of the privilege of this House, is not plainly and distinctly expressed in the said vote, as we humbly conceive it ought to be; nor doth it appear therein what particular privilege of this House is broken by any matter contained in the said paper; and therefore this vote can be of no use to support any privileges of this House, or prevent the breach of any of them for the future.

2ndly, Because the said vote may tend to the disunion of both Houses, which, we humbly conceive, may prove of dangerous consequence to the King and Kingdom; we apprehending the whole drift of the said paper to be in order to have relief in a legislative way; and accordingly the case and prayer is directed to both Houses.

3rdly, Because this day being appointed, by order of the House, to have the opinion of the judges on the writ of error in the case of the said Titus Oates, and the said judges attending accordingly, we did think it proper that this honourable House would have heard

their opinion in the said case ; and thereupon have (according to the usual course of other courts of judicature in such cases) proceeded to sentence before the taking into consideration the said paper, introduced but this morning into the House.

Charles Paulet, Duke of Bolton.  
 Charles Gerard, Earl of Macclesfield.  
 Thomas Grey, Earl of Stamford.  
 Charles Cornwallis, Lord Cornwallis.  
 Philip Wharton, Lord Wharton.  
 Henry Sydney, Viscount Sydney.

## LXIX.

MAY 31, 1689.

Oates was committed to the King's Bench prison (the Marshalsea) by order of the House on the 25th of May, and on the 28th of May petitioned the Lords to pardon any offence in his petition committed by inadvertence or ignorance, and is brought on the 30th before the bar, when he was informed that exceptions were taken to his styling himself D.D. in his petition. He answered that he is Doctor of Divinity, and had his degree at Salamanca. He is told to withdraw, and on appearing again is told to strike out the D.D., which he says he cannot do, out of conscience ; and he is therefore remanded to prison. Next day his writs of error are to be considered, and the Judges are ordered to be present. On this day the judgments against him are affirmed by 35 to 23, and the following protest is inserted.

1st, For that the King's Bench, being a temporal court, made it part of the judgment that Titus Oates, being a clerk, should, for his said perjuries, be divested of his canonical and priestly habit, and to continue divested all his life ; which is a matter wholly out of their power, belonging to the ecclesiastical courts only.

2ndly, For that the said judgments are barbarous, inhuman, and unchristian ; and there is no precedent to warrant the punishments of whipping and committing to prison for life, for the crime of perjury ; which yet were but part of the punishments inflicted upon him.

3rdly, For that the particular matters, upon which the indictments were found, were the points objected against Mr. Titus Oates's testimony, in several of the trials, in which he was allowed to be a good and credible witness, though testified against him by most of the same persons who witnessed against him upon these indictments.

4thly, For that this will be an encouragement and allowance for giving the like cruel, barbarous, and illegal judgments hereafter, unless this judgment be reversed.

5thly, Because Sir John Holt, Sir Henry Pollexfen, the two Chief Justices, and Sir Robert Atkins, Chief Baron, with six judges more (being all that were then present), for these and many other reasons, did, before us, solemnly deliver their opinions, and unanimously declare that the said judgments were contrary to law and ancient practice; and therefore erroneous, and ought to be reversed.

6thly, Because it is contrary to the declaration, on the 12th of February last, which was ordered by the Lords spiritual and temporal and Commons then assembled, and by their declaration engrossed in parchment, and enrolled among the records of Parliament, and recorded in Chancery, whereby it doth appear, that excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Charles Paulet, Duke of Bolton.  
 Charles Gerard, Earl of Macclesfield.  
 John Egerton, Earl of Bridgwater.  
 Thomas Grey, Earl of Stamford.  
 Aubrey de Vere, Earl of Oxford.  
 Paulet St. John, Earl of Bolingbroke.  
 John Granville, Earl of Bath.  
 Henry Herbert, Lord Herbert of Chirbury.  
 Forde Grey, Lord Grey de Warke.  
 John Vaughan, Lord Vaughan (Earl of Carbery).  
 Francis Newport, Viscount Newport.  
 Charles Cornwallis, Lord Cornwallis.  
 Ralph Eure, Lord Eure.  
 Philip Wharton, Lord Wharton.

## LXX.

JUNE 25, 1689.

Sir Samuel Barnardiston was the foreman of the grand jury in the case of Lord Shaftesbury, when the memorable Ignoramus was returned. On the 14th of February, 1684, he was indicted before Jeffreys, then Chief Justice, for a misdemeanour contained in certain letters commenting on the trials of Russel, Sidney, and others, and on the suicide of the Earl of Essex. The charge was commented on in his characteristic manner by Jeffreys, the jury found the defendant guilty, and he was fined £10,000. There is a ballad in Ashmole (Bodley) 16. 139, rejoicing over this mishap

of the Whig baronet. The account of the trial can be found in Wood 428 A, Bodley. On the 14th of May, 1689, this judgment was reversed, grounds and reasons being given for it in the journals of the day. On the 20th of May, he moved for the reversal of a judgment given against him at the suit of Soames. In this case it appears that the sheriff, Sir William Soames, being returning officer, had made a double return of an election to Sir Samuel Barnardiston's injury, and that he strove to obtain a remedy in King's Bench, Easter Term, 1674; where judgment was given for him. In Trinity Term, 1676, this judgment was reversed before the Common Pleas and the Exchequer. The present appeal to the Lords was to re-establish the judgment of the King's Bench, which it appears gave Sir Samuel £800 damages, but was unsuccessful. See Freeman's Reports, 496, 500, 503, 579.

The following protest was entered.

1st, Because it is a denying Sir Samuel Barnardiston the benefit of law, which gives relief in all wrong and injury; and though this be an action of the first impression, yet here being a damage to the plaintiff, the common law gives him this action to repair himself; and were it not so, there would be a failure of justice, which cannot be admitted.

2ndly, Because the allowing this reversal tends towards the giving power and encouragement to the sheriffs to make false and double returns, by which means the right of elections will be avoided, and it tends thereby to the packing of a House of Commons, which may overturn the whole frame of the government, and establish what religion and government a packed Parliament shall think fit.

Charles Paulet, Duke of Bolton.  
 Thomas Grey, Earl of Stamford.  
 Charles Gerard, Earl of Macclesfield.  
 Henry Herbert, Lord Herbert of Chirbury.  
 Philip Wharton, Lord Wharton.

## LXXI.

JULY 12, 1689.

In the Bill for reversing the judgments against Oates, a proviso was proposed, 'That until the said matters for which the said Titus Oates was convicted as aforesaid for perjury be heard and determined in Parliament, that the said Titus Oates shall not be received in any court, matter or cause whatsoever, to be a witness, or give any evidence, anything in this Act in any wise contained to the contrary notwithstanding' and passed. The Bill ultimately dropped, in consequence of a disagreement with the Commons, in which House the Bill in favour of Oates originated. The parts of the Bill objected to will be gathered from these divisions.

Third press, 29 line, after the word 'erroneous' read 'unprecedented and so,' and after 'illegal, and are of ill example to future ages' read 'that the practice thereof ought to be prevented for the time to come.'

The question was put, whether to agree to this amendment.

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It was resolved in the affirmative.

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Thirty-fourth line, after 'King's Bench' leave out these words—'and the judgments given on the said writs of error.'

The question was put, whether to agree to this amendment.

It was resolved in the affirmative.

Thirty-seventh line, after the word 'judgments' add 'in the Court of King's Bench.'

The question was put, whether to agree to this amendment.

It was resolved in the affirmative.

Thirty-seventh line, after the word 'defaced' leave out 'anything to the contrary thereof in anywise notwithstanding,' and read 'and it is hereby further enacted, by the authority aforesaid, that it shall not be lawful at any time hereafter to inflict the like excessive punishments again on any person whatsoever.'

The following protest was then inserted.

Leave was given to any Lords to enter their dissents, and these Lords following do enter their dissents to the several foregoing questions for these reasons :

To the first.

Because we are of opinion, that the judgments given in the Court of King's Bench against Titus Oates are altogether illegal and cruel, and not capable of being qualified in justice or law, by the words 'unprecedented and so cruel and illegal, that the practice thereof ought to be prevented for the time to come,' but ought plainly to be declared positively against law, justice, and the undoubted right of the subject.

To the second.

Because we are of opinion, that no merit or demerit of any person appealing to the House of Lords, or bringing thither a writ of error, ought to have any weight with the Lords in giving judgment ; and therefore no reason why the said judgments ought not to be reversed by the legislative power, since the supreme Court of Judicature (the Lords in Parliament) is the utmost resort any person can have for justice, except the legislative power.

To the third.

Because we are of opinion, that barely saying ‘it shall not be lawful at any time hereafter to inflict the like excessive punishments again’ is not strong enough to deter a corrupt or partial judge from practising the same, because it is without a penalty upon such judge; and barely the transgression of law, not made penal, can amount to no more for punishment than a moderate fine; and there is no doubt but all judges will be hereafter cautious of setting great fines, since of late the subject, in that point, has been grievously oppressed, as does appear by several exorbitant fines annulled in this present Parliament.

We also enter our dissent to the proviso for these reasons :

1st, Because no man ought, by the laws of England, to be punished unheard ; though the Parliament has power in all things possible in its legislative capacity, yet by all rules of law and justice, no man ought to be oppressed merely arbitrarily ; and in this case it seems to us to be so, for the other part of the Bill reverses two illegal and unjust judgments against Titus Oates in the King’s Bench, affirmed upon writs of error brought to reverse the same ; and this proviso, without hearing him in his defence, enacts Titus Oates to be a man incapable of being a witness, which, we conceive, is more infamy than being a slave.

2ndly, The proviso, as it is penned, that it may have a show of justice, seems to give him, the said Titus Oates, a liberty to clear himself, but in reality it is impossible for him so to do ; for if it be meant, that the matter for which the said Titus Oates was convicted of perjury, must be heard and determined in Parliament in a legislative way, there is no need of this proviso ; but if it be meant, that the said matters for which he was convicted of perjury must be heard and determined by the House of Lords in Parliament, then (besides that it may seem to cast a reflection upon the proceeding of the House of Lords, in affirming the judgments given in the King’s Bench against him, without hearing him) there will be two insuperable difficulties ; one is, that by the rules and practice of the House of Lords, as a Court of Judicature, the Lords cannot call for the matters and evidence concerning the two verdicts, nor can Titus Oates bring that before the Lords in judicature ; the other is, in case the Lords in judicature shall call for the same, or Titus Oates should bring them before the Lords in judicature, and the Lords proceed thereon to give judgment, it is by us conceived,

that it would be an original cause, and therefore not to be proceeded upon.

3rdly, If Titus Oates cannot acquit himself of perjury, as this proviso seems to give him liberty to do in the House of Lords, he can never bring it into any inferior court.

4thly, Last of all, we conceive that the refusing to condemn the verdicts brought against Titus Oates in the King's Bench does condemn, at the same time, the credit of the Popish plot, which was affirmed by so many witnesses in several Parliaments, and caused so many addresses to the King concerning it, since the first discovery of it was upon this very evidence, for which he was convicted (though by a packed corrupt jury by the highest oppression, and by a former jury in the same case acquitted) of perjury.

William Russell, Earl of Bedford.

Thomas Lennard, Earl of Sussex.

John Vaughan, Lord Vaughan (Earl of Carbery).

Francis Newport, Viscount Newport.

Thomas Grey, Earl of Stamford.

Charles Berkeley, Lord Berkeley of Berkeley.

George Howard, Earl of Suffolk.

Ralph Montague, Earl of Montague.

Charles Gerard, Earl of Macclesfield.

Charles Cornywallis, Lord Cornwallis.

William Paget, Lord Paget.

## LXXII.

JULY 12, 1689.

The following is a second protest directed against the amendments to the Bill for reversing the judgments on Oates. The reasons why the Commons finally dissented from the amendments of the Lords are to be found in the Lords' Journal of the 22nd of July.

Because it is altogether unintelligible to us, how we can reverse the judgments in the King's Bench as erroneous and illegal, and yet so industriously pass by the judgments given in this House, that affirm those illegal and erroneous judgments, by rejecting that clause in the Bill brought up from the House of Commons that reverses that judgment also.

Against the proviso.

Because the title and intention of the Bill is to reverse the judgments against Titus Oates, but this proviso makes it firmer and

heavier than ever, as much as an Act of Parliament is of more weight than the sentence of any judicial court, and the infamy of perjury a greater punishment than anything barely corporal.

Because, we think, we cannot justify to the world, or our own consciences, such a compliance for the judgments of profligate wretches, set up for judges in Westminster Hall, as that in the same Act, wherein we are forced (upon undenial reasons, manifest to the whole world) to annul their judgments as illegal and erroneous, we should yet retain and fix upon him, who hath already suffered by it, undue and unheard-of punishments, the severest part of a confessed illegal sentence.

Because we cannot consent that this House, which hath been always looked on as the seat of justice and honour, should come under the obloquy of a place where men are condemned first and tried afterwards, which we cannot see how to avoid, if, according to this proviso, we lay Dr. Oates presently under the condemnation of perjury, until the matters of that perjury shall be heard and determined hereafter.

Because, supposing him guilty, we being by no forms of justice obliged to condemn him, we think it prudence not to give an occasion to be thought apprehensive of his testimony, by taking this new and unheard-of way of depriving him of it.

The case of any man living: the condemnation of perjury ought not to be laid on Titus Oates, before a fair and full hearing, for that it was so much the labour of the enemies of our religion and liberties (who in this matter knew well what they did) to advance their designs by invalidating his testimony, the credit of which was in vain attempted by solemn trial, till the irregularities of the last reign, and the way to corrupt judges and juries to that purpose; we therefore fear, we may be accused of out-doing the whipping precedents of Westminster Hall, in consenting to condemn without hearing or trial.

Because we cannot consent that this hardship be put on his Majesty, either to reject a Bill offered to him by both Houses, which hitherto he hath not done, or else, in a most solemn way, to lay a man under the condemnation of the most detestable crime, without any knowledge of it; an injustice nobody can advise him to, to advance his own interest, much less for the promoting that of his enemies, who always did and do think themselves concerned to

discredit the opinion of the Popish plot, to which this seems to have a great tendency.

Because we cannot consent to fix on any one the condemnation of perjury, by Act of Parliament, upon bare surmise before a hearing, were it for no other reason but that those who have proofs may, by an orderly course of law, convict him ; to condemn Oates of perjury, until it shall be heard and determined in Parliament, is to condemn him for ever and unheard ; for how after this can it come judicially before us ? There lies no indictment in the House of Lords, nor writ of error, when the record is vacated ; so that it is utterly impossible for Titus Oates to receive any benefit by a remedy, seemingly provided for him, by Act of Parliament.

Charles Mordaunt, Earl of Monmouth.

Ralph Montague, Earl of Montague.

George Howard, Earl of Suffolk.

Aubrey de Vere, Earl of Oxford.

Charles Gerard, Earl of Macclesfield.

Henry Herbert, Lord Herbert of Chirbury.

### LXXXIII.

JULY 30, 1689.

On this day the Earl of Rochester and others, the managers of the free conference between the Houses, reported to the Lords on the reasons alleged by the Commons on behalf of their dissent from the Lords amendments. After a debate, the Lords determined to adhere to the amendments. The Commons demanded a fresh conference, and the Lords appointed a committee to search after precedents for a conference after a resolution to adhere to amendments. No report appears to have been made by this committee, and the matter dropped. The report to the House of Commons may be found in Parliamentary History, vol. v. p. 386, and was made on the 31st of July. The Commons return to the subject on the 13th of August, but Parliament is prorogued on the 20th of August. It may be added, that Oates obtained an address from Parliament to the King praying that he would grant Oates a pardon, that a pardon was granted, and that he received a pension of £5 a week. The pensions which Charles II had granted him amounted to £884 a year. Luttrell says, that the resolution not to reverse the judgments was carried by two votes only. Oates died on the 17th of July, 1705.—Luttrell.

These Lords following do enter their dissents to the abovesaid question in the reasons ensuing :

1st, Because the persons who gave evidence against Titus Oates were incompetent witnesses.

2ndly, Because Titus Oates's evidence had before been verified upon those very points in which the perjury is assigned.

3rdly, Because it was at a time when neither counsel nor witnesses could, with safety, appear for Titus Oates.

4thly, Because it was at a time when the whole course of the administration of the Government was corrupted.

5thly, Because a vast sum of money, on that trial, and other foul practices, were used both with the witnesses and jurors.

6thly, Because it makes it almost impossible to prove that a verdict is corrupt, if nothing but the giving and taking of money may pass for evidence; whereas the law has declared that many other things may make a verdict corrupt.

7thly, Because this gives the jury preference in point of justice above four successive Parliaments.

8thly, Because it casts an imputation on the verity of the Popish plot, and on the justice of the nation, and justifies my Lord Stafford, and the rest that suffered on the score of the plot, so long as the judgment against Oates stands in force.

9thly, Because it is expressly against the declaration of our rights on the 13th of February last.

10thly, Because it is the greatest blow that ever the English liberties received, and puts them under a greater disadvantage than if they had not so lately been declared.

11thly, Though a Bill should be brought in to declare the like judgment shall not be given in time to come, yet it would imply that before such judgment was lawful; which may be of pernicious consequence.

12thly, Because this judgment against Oates has so far been received for law, since Oates suffered, that whipping has been used in other cases besides perjury.

13thly, Because the Lords have allowed the judgment against Titus Oates to be erroneous.

14thly, Because it is more consistent with the honour and justice of the House of Peers to rectify a mistaken judgment, given by themselves, than to adhere to it.

15thly, Because, at Oates's trial, the court refused to grant a *habeas corpus* for his witnesses that were in prison, though often by him demanded, and no notice taken of his demand even by the jurors themselves.

Charles Paulet, Duke of **Bolton**.  
 Thomas Grey, Earl of **Stamford**.  
 Ralph Montague, Earl of **Montague**.  
 Francis Newport, Viscount **Newport**.  
 Paulet St. John, Earl of **Bolingbroke**.  
 John Granville, Earl of **Bath**.  
 Thomas Savage, Earl **Rivers**.  
 Charles Gerard, Earl of **Macclesfield**.  
 Charles Bodvile Robartes, Earl of **Radnor**.  
 Henry Herbert, Lord **Herbert of Chirbury**.  
 Charles Granville, Lord **Granville**.  
 William Paget, Lord **Paget**.  
 Charles Cornwallis, Lord **Cornwallis**.  
 Henry Booth, Lord **Delamere**.  
 John Vaughan, Lord **Vaughan** (Earl of Carbery).  
 John Culpeper, Lord **Culpeper**.  
 Aubrey de Vere, Earl of **Oxford**.  
 Charles Mordaunt, Earl of **Monmouth**.  
 Charles Talbot, Duke of **Shrewsbury**.  
 Edward Ward, Lord **Ward of Birmingham**.  
 John Lovelace, Lord **Lovelace**.

## LXXIV.

NOVEMBER 19, 1689.

Marriages of minors by force or fraud were common enough at this period, the age of consent by canon or custom being low. The Lords several times attempted to pass an Act to avoid such marriages, as in 1678, 1679, 1680, 1681, 1685, 1689, 1692, 1698, 1699; but in every case the Bill dropped in the Commons. Relief, however, was accorded by the legislature in special cases. Thus, for example, in the year 1690 a marriage of this kind between Mary Wharton and James Campbell was annulled by Act of Parliament. In this case, Mary Wharton, an heiress, having a fortune of £1,500 a year, was taken out of her aunt's coach, and carried away by a Captain James Campbell, Archibald Montgomery, and Sir John Johnston, married against her consent to Captain Campbell, and then returned to her friends.—See Luttrell's Diary.

The following protest was made against the third reading of a Bill disabling minors to marry without the consent of their fathers or guardians, and against their untimely marrying after the decease of their fathers, and for preventing all clandestine marriages for the future.

Though we approve of the design of the Bill, yet we enter our dissent, because we believe marriage to be so sacred an ordinance of God, that after it is religiously contracted and consummated, it cannot be nulled.

Charles Dorner, Earl of Carnarvon.

Henry Compton, Bishop of London.  
 Peter Mews, Bishop of Winchester.  
 William Beaw, Bishop of Llandaff.  
 William Maynard, Lord Maynard.  
 Thomas Watson, Bishop of St. David's.  
 Gilbert Ironside, Bishop of Bristol.  
 George Legge, Lord Dartmouth.  
 James Bertie, Earl of Abingdon.

## LXXV.

NOVEMBER 23, 1689.

The Bill of Rights was read for the first time in the House of Lords on the 6th of November, 1689, and for the second time on the 14th of November, when it was ordered to be committed to the whole House on the 16th of November. It was debated on that day, on November the 18th, 19th, 21st, 22nd. On the 23rd it was read a third time, and a motion was made to add the following clause to the Bill :

' And be it further enacted, by the authority aforesaid, that all pardons upon any impeachment of the House of Commons are hereby declared to be null and void, except it be with consent of both Houses of Parliament.'

This clause, called a rider in the Journals, was debated for a long time, and was finally rejected by a majority of 33; 50—17. The votes, it is said, could not be ascertained, and therefore tellers were appointed.

The rule contended for then, that pardons should not be pleaded in bar of an impeachment by the Commons, did not receive a legal sanction till the Act of Succession (1701), where it appears the last of the various clauses of Right contained in that Act, 12, 13 Will. III, cap. ii. sect. 3.

The following protest is entered in the Journals.

1st, Because to impeach being the undoubted right of the Commons of England, and by which alone justice can be had against offenders that are too big for the ordinary courts of justice, impeachments would be rendered altogether ineffectual, if the King can pardon in such cases.

2ndly, Because such a power of pardoning would cause a failure of justice, which the law of England will not allow of in any case.

3rdly, Because the Government becomes precarious, when there is wanting a sufficient power to punish evil Ministers of State, the bringing of such Ministers to justice being then a matter of grace, and not of right.

4thly, Because such evil Ministers are in a much securer condition than any other offenders, it being the interest of ill-disposed Kings to protect them from justice, since they are so much the more useful

and necessary to such Kings, by how much they have been instrumental in subverting the Government.

5thly, Because the King can only pardon such offences as are against himself, but not in case of an appeal, nor wherever the wrong or injury is to a third person.

6thly, *A fortiori*, the King cannot pardon an impeachment, because all the Commons of England have an interest in it, and it is at their suit.

7thly, Because it is inconsistent with the Government of England to vest a power anywhere, that may obstruct the public justice.

8thly, Because such a power of pardoning sets the King's prerogative above the Government, which is inconsistent with the reason and nature of this constitution.

9thly, Because the rejecting of the rider, and the vote of this House against the dispensing power in general, does not seem to be very consistent, since the power of pardoning upon impeachments is altogether as great as that of the dispensing power.

Charles Paulet, Duke of Bolton.  
Thomas Grey, Earl of Stamford.  
Charles Gerard, Earl of Macclesfield.  
John Granville, Earl of Bath.  
Ralph Montague, Earl of Montague.  
Henry Herbert, Lord Herbert of Chirbury.  
Charles Granville, Lord Granville.  
Henry Booth, Lord Delamere.  
Charles Bennet, Lord Ossulston.  
John Lovelace, Lord Lovelace.  
Charles Cornwallis, Lord Cornwallis.  
Thomas Crewe, Lord Crewe.

## LXXVI.

JANUARY 14, 1690.

On this day the Peers came to a resolution that it is 'the ancient right of the Peers of England to be tried only in full Parliament for any capital offences.' It had been often the practice to try Peers by a selected jury of Peers, and of course it was possible under such circumstances to select a jury which belonged to the opposite faction of the person indicted or impeached. The right of all Peers to be summoned in cases of treason is provided by 7 Will. III, cap. 3, sect. 11, the ground alleged being that a majority is sufficient to acquit or condemn in this case : whereas unanimity is required from a jury impanelled in the case of Commoners. The

objections alleged in the following protest, which are principally technical, are directed against the phrase 'full Parliament.'

1st, Because the statute of 15 Edw. III, which first enabled the trial of Peers to be only in Parliament, is repealed by the statute of 17 Edw. III, as contrary to the laws and usage of the Realm, as well as the rights and prerogatives of the Crown.

2ndly, As the statute of 17 Edw. III has declared the law and usage of the Realm before the statute of 15 Edw. III, so the practice has been accordingly ever since, insomuch that from that day to this, no Peer indicted for a capital offence has ever claimed a privilege of being tried only in Parliament; and though very many Peers have been tried and attainted out of Parliament, yet no writ of error to reverse such attainder for that reason has ever been demanded.

3rdly, Because the consequence of this assertion would be, that the heirs of all such as ever were attainted out of Parliament might claim to be Peers of this Realm, the attainder of their ancestors being void, because the sentence against them was given by a court that had no jurisdiction; and also for the same reason, all acquittals of any Peers would be void too, and the Peers may be brought again into jeopardy of their lives.

4thly, The frequent attempts to obtain an Act of Parliament to enact, 'That no Peer shall be tried out of Parliament for capital offences,' is an evidence, that, without such a law, a Peer may be tried out of Parliament, and no vote of either House of Parliament can change the law.

5thly, Because this vote takes from the subject the right of an appeal of felony, in which a Peer ought to be tried by a jury of Commoners, and not by his Peers.

6thly, Because it deprives the Peers of the benefit of the *Habeas Corpus* Act, for if a Peer cannot be tried for a capital offence but only in Parliament, and may be committed to prison for such offence, he must of necessity remain there till the next Parliament, contrary to the said Act, which no resolution of the House of Peers can or ought to alter at the price of their liberty.

7thly, This vote, 'That the Peers must be tried only in full Parliament,' seems to imply that the Commons are necessary parties to the trial of a Peer, which is contrary to *Magna Charta* and the known laws of this realm.

Daniel Finch, Earl of **Nottingham**.  
 Henry Sydney, Viscount **Sydney**.  
 Charles Cornwallis, Lord **Cornwallis**.  
 George Savile, Marquis of **Halifax**.  
 Ralph Eure, Lord **Eure**.  
 Philip Wharton, Lord **Wharton**.  
 Charles North, Lord **North** and Grey of **Rolleston**.

These last four names are written by the side of the protest.

## LXXVII.

JANUARY 23, 1690.

A Bill was brought to the Lords from the Commons, entitled ‘An Act to restore corporations to their ancient rights and privileges.’ The first enacting clause of the Bill contained an expression that the surrender of a corporation is illegal. The Lords took the opinion of the judges on the subject, and, influenced apparently by the fact of the surrender of the Abbeys to Henry VIII, the Lords determined to strike out the words ‘declared, and were, and are illegal.’ The Bill was lost by the sudden dissolution of the Convention Parliament on the 27th of January.—See Hallam’s Constitutional History, chapter xv.

The following protest was inserted in the Journals.

The Lords following, before the putting of the abovesaid question, desired leave to enter their dissents, if the question was carried in the affirmative, and accordingly they do enter their dissents as follow :

1st, That there hath been only two cases cited, in all the law books, towards the maintaining the surrender of corporations, viz. Dyer 273, 282. The opinions in these cases are not upon argument; the first of them, as appears by the book, needed, and had, an Act of Parliament to confirm it, being denied to be law in my Lord Coke’s third report, in the Dean and Chapter of Norwich’s case, 44 Elizabeth. The other of them denied to be law by the judges of the King’s Bench in Fulcher and Heywood’s case in 2 Charles I, in Palmer’s reports; and by the express authority of that case, and the express resolution of the judges in that case, a corporation cannot, by surrender, dissolve itself.

2ndly, Because that Beda, in the time of Henry V, the corporation of Newbury, did surrender to that King, which was not allowed, but the House of Commons called upon them to send up members, notwithstanding the said surrender; and until they

petitioned the said House, setting forth their inability of supporting that charge, they were not excused ; but the House allowed their petition, and they have sent none since.

3rdly, The surrenders in debate, being for the intent and purpose of returning such Parliament men whom the King should appoint, was for the subversion of the laws and liberties of England, and introducing of popery and arbitrary government ; and that the putting out these words seems to be the justifying of the most horrid action that King James was guilty of during his reign ; and, we humbly conceive, a denying the chiefest grievance mentioned in King William's declaration when he was Prince, and the greatest inducement for the people's taking up arms in defence of their liberties and properties, and Protestant religion, and the establishing this King upon the throne.

Charles Paulet, Duke of Bolton.  
 William Russell, Earl of Bedford.  
 Thomas Grey, Earl of Stamford.  
 Charles Gerard, Earl of Macclesfield.  
 Ralph Montague, Earl of Montague.  
 John Vaughan, Lord Vaughan (Earl of Carbery).  
 Henry Sydney, Viscount Sydney.  
 Henry Herbert, Lord Herbert of Chirbury.  
 John Ashburnham, Lord Ashburnham.

## LXXVIII.

APRIL 5, 1690.

The Parliament which met on the 20th of March made it a first business to affirm the Acts of the Convention Parliament, a doubt having been entertained as to whether it was legally summoned. In the first clause of the Bill, the Committee of the Lords recommend the insertion of the word 'adjudged,' an addition which is rejected.—See Hallam, chapter xv.

The following protest of ten Whig Peers is thereupon inserted.

Leave having been given to any Lords to enter their dissents, if the question was carried in the negative, we, whose names are hereafter written, do enter our dissents for these reasons following :

1st, Because there appears to us no reason to doubt of the validity of the last Parliament, the great objection insisted upon being the want of writs of summons, which we take to be fully answered by the state the nation was in at that time, which made that form

impossible, such exigencies of affairs having been always looked upon by our ancestors (however careful of Parliamentary forms) to be a sufficient reason to allow the authority of Parliament, notwithstanding the same, or other defects in point of form ; as the Parliament which set Henry I and King Stephen on the throne, the Parliament held 28 Edward I, the Parliament summoned by the Prince of Wales 20 Edward II, the Parliament summoned 23 Richard II, the Parliament held 1 Henry VI, and the Parliament held 38 Henry VI, the Acts of which Parliaments have been held for law.

2ndly, Because the rejecting this clause must necessarily disturb the minds of the greatest part of the kingdom ; for if those be not good laws, all commissioners, assessors, collectors, and receivers of the late taxes are not only subject to private actions, but to be criminally prosecuted for one of the highest offences against the constitution of the English Government, viz. the levying money on the subject without lawful authority ; all persons who have lent money, upon the credit of those laws, will be in dread of their security, and impatient to get in their money ; all persons concerned in levying the present taxes will be fearful to proceed ; all persons who have accepted any offices or employments, ecclesiastical, civil, or military, will be under the apprehension of having incurred all the terrible forfeitures and disabilities of the Act of 25 Charles II, cap. 2, and all who have any way concurred to the condemnation or execution of any person upon any Act of the late Parliament, will think themselves in danger of being called to an account for murder.

3rdly, Because to leave a doubt touching the validity of the last Parliament, is to shake all the judgments and decrees given in the House of Peers, or in Westminster Hall, during this reign ; and to bring a question upon the whole course of judicial proceedings.

4thly, Because if the authority of the last Parliament be not put out of the question, the authority of the present Parliament can never be defended, for the statute of 5 Elizabeth, cap. 1, makes the election of every Member of the House of Commons absolutely void, if he enter into the House without taking the oath of supremacy ; which no one person having done, there is an end of this House of Commons : and by the statute made 30 Charles II, if any Peer or Member of the House of Commons presume to sit and vote without first taking the oaths of allegiance and supremacy, before the

Speaker of the respective Houses, he does not only forfeit five hundred pounds, and become as a Popish recusant, and disabled to take a legacy, to hold any office or place of trust, to prosecute any suit, to be a guardian, executor or administrator, but is made for ever incapable to sit and vote in either House of Parliament; and consequently this can be no Parliament, nor any who have sat in either House be capable of sitting in Parliament hereafter.

5thly, Because to leave room to doubt of the authority of the last Parliament, is to shake the succession of the crown established by it, and the credit and authority of all treaties made with foreign princes and states by King William, as the undoubted King of these realms; so that if the last was no Parliament, and their acts no laws, this is our case: the nation is engaged in a war without the consent of Parliament, the old oaths of supremacy and allegiance remain in force, and the nation forced, under colour of law, to swear fidelity to King William, though they can never act as a lawful Parliament without taking the oaths of allegiance to King James: all judgments and decrees in the House of Lords, during the late Parliament, are of no force; great sums of money have been levied, without consent of Parliament, and men have been put to death, not only without but against law, which is the worst sort of murder: lastly, the King upon the throne, the Peerage of England, and the Commons freely elected by the people, have been parties to all this: the Peers and Commons now assembled are under a perpetual disability, and the nation is involved in endless doubts and confusions, without any legal settlement or possibility to arrive at it, unless a Parliament be summoned by King James's writ, and the oaths of allegiance taken to him.

Charles Paulet, Duke of Bolton.  
William Russell, Earl of Bedford.  
Charles Mordaunt, Earl of Monmouth.  
Thomas Grey, Earl of Stamford.  
Charles Gerard, Earl of Macclesfield.  
George Howard, Earl of Suffolk.  
Henry Herbert, Lord Herbert of Chirbury.  
Aubrey de Vere, Earl of Oxford.  
Henry Booth, Lord Delamere.  
Francis Newport, Viscount Newport.

## LXXIX.

APRIL 8, 1690.

In the Bill referred to under the foregoing protest, the title was amended at the table by adding after the word King—‘William,’ and after<sup>1</sup> the word Queen—‘Mary,’ and the addition was accepted. Then it was moved that the Bill do pass, and the question was affirmed. On this the following Tory Lords protest. It is here to be observed that the protest was expunged by vote of the 10th of April, the first instance of this very rare practice. The protest is legible however, and is as follows.

*1st, Because we conceive that saying ‘it is enacted by the authority of this present Parliament, that all and singular the Acts made in the last Parliament were laws’ is neither good English nor good sense.*

*2ndly, If it were good sense to enact for the time past, it must be understood, on this subject, to be the declaring of laws to be good which were passed in a Parliament not called by writ in due form of law, which is destructive of the legal constitution of this monarchy, and may be of evil and pernicious consequence to our present government under this King and Queen.*

Charles Seymour, Duke of Somerset.  
 Robert Leke, Earl of Scarsdale.  
 Theophilus Hastings, Earl of Huntingdon.  
 Laurence Hyde, Earl of Rochester.  
 Charles Fane, Earl of Westmorland.  
 James Bertie, Earl of Abingdon.  
 Lewis de Duras, Earl of Feversham.  
 Thomas Thynne, Viscount Weymouth.  
 Daniel Finch, Earl of Nottingham.  
 Thomas Jermyn, Lord Jermyn.  
 George Legge, Lord Dartmouth.  
 Henry Compton, Bishop of London.  
 Peter Mews, Bishop of Winchester.  
 William Beaw, Bishop of Llandaff.  
 Thomas Watson, Bishop of St. David’s.  
 William Lloyd, Bishop of St. Asaph.  
 Edward Stillingfleet, Bishop of Worcester.

## LXXX.

APRIL 10, 1690.

The two reasons contained in the last protest were expunged by order of the House.

<sup>1</sup> The original says ‘before,’ but this is clearly a clerical error.

The following protest is entered against the procedure.

Whereas the questions for expunging the reasons of our protestation, April the 8th, were carried in the affirmative; and whereas these reasons were only against some words in one clause in the Bill intituled ‘An Act for recognising King William and Queen Mary,’ and for avoiding all questions touching the Acts made in the Parliament assembled at Westminster the 13th day of February, 1688, which enacted that the Acts of the late Parliament were laws and statutes of this Realm:

And leave being given to enter our dissents to these votes of expunging those reasons, we do so accordingly for these reasons:

1st, Because it is the privilege of the Peers to enter their dissent, and it has been the ancient practice to enter also the reasons of such dissent, of which the Lords, that so protest, are the most proper judges, as well knowing what arguments persuaded them to be of that opinion; and no reasons can be more proper than such as they conceive are founded upon matter of fact and the law of the land.

2ndly, Because there is no precedent of expunging the reasons of any protestation.

3rdly, Because the protestation was not against the whole Bill, but some particular words of it. But by expunging the reasons of that protestation, it appears that we have protested against the whole Bill, which is contrary to our sense and intentions.

Daniel Finch, Earl of Nottingham.  
 Henry Compton, Bishop of London.  
 Peter Mews, Bishop of Winchester.  
 James Bertie, Earl of Abingdon.  
 Charles Fane, Earl of Westmorland.  
 William Lloyd, Bishop of St. Asaph.  
 Thomas Watson, Bishop of St. David's.  
 James Brydges, Lord Chandos.  
 Humphrey Humphreys, Bishop of Bangor.  
 Edward Stillingfleet, Bishop of Worcester.  
 Thomas Jermyn, Lord Jermyn.

## LXXXI.

MAY 13, 1690.

A Bill was brought into the Lords, entitled ‘An Act for reversing the judgment in a Quo warranto against the city of London, and for re-

storing the city of London to its ancient rights and privileges.' The House went into Committee, and heard counsel on behalf of the city, and when the House resumed, the Earl of Nottingham reported that the Committee had sat according to order, and have thought fit to allow further time to the city of London to be heard by counsel to the Bill. But the House refused to allow longer time. The Bill in question is found in the Statute-book as 2 William and Mary, cap. viii. The preamble recites the judgment.

The following protest is inserted.

1st, Because it seems very hard, that a further time of preparation should not be allowed in a case of the highest importance, to which the city, by their whole representative body, had desired to be heard, especially several Lords having informed the House on their behalf, that the time granted them was not sufficient to instruct their counsel in, who, at the bar, did also desire a further day to be able to speak to such important points, declaring themselves not sufficiently prepared, having their instructions but late the night before.

2ndly, Because of how much greater moment any thing is, so much the greater deliberation and advice ought to be had upon it; and this is of such high importance, that it not only concerns the city of London, but all the corporations in England, that are by prescription, and, in consequence, the legislative of this government.

Charles Paulet, Duke of Bolton.  
 Charles Cornwallis, Lord Cornwallis.  
 Thomas Grey, Earl of Stamford.  
 Charles Gerard, Earl of Macclesfield.  
 Aubrey de Vere, Earl of Oxford.  
 William Russell, Earl of Bedford.  
 William Cavendish, Earl of Devonshire.  
 John Vaughan, Lord Vaughan (Earl of Carbery).  
 Francis Newport, Viscount Newport.  
 Charles Sackville, Earl of Dorset.  
 John Egerton, Earl of Bridgwater.  
 John Granville, Earl of Bath.  
 Ralph Eure, Lord Eure.  
 Hugh Clifford, Lord Clifford of Chudleigh.  
 John Holles, Earl of Clare.  
 Ralph Montagu, Earl of Montagu.  
 Charles Granville, Lord Granville.  
 Henry Booth, Earl of Warrington.  
 Charles Montagu, Earl of Manchester.  
 Charles Mordaunt, Earl of Monmouth.

Philip Wharton, Lord Wharton.  
 John Lovelace, Lord Lovelace.  
 George Carteret, Lord Carteret.  
 Charles Benet, Lord Ossulstone.  
 Henry Herbert, Lord Herbert of Chirbury.  
 Robert Sydney (Chivaler), Viscount L'Isle.

## LXXXII.

OCTOBER 30, 1690.

A declaratory Act was passed, 2 William and Mary, cap. ii, in order to set at rest all doubts as to the powers of the Commissioners executing the office of Lord High Admiral. The allusion to Lord Torrington (Admiral Herbert) in the protest refers to the action off Beachy Head, on the 30th of June, and the subsequent disgrace of Torrington. See Ralph, vol. xi, p. 225; Luttrell under the dates; Macaulay, chap. xv.

The following protest was entered.

1st, Because this Bill gives a power to Commissioners of the Admiralty to execute a jurisdiction, which by the Act 13 Charles II, intituled 'An Act for establishing articles and orders for the regulating and better government of his Majesty's navy, ships of war, and forces by sea,' we conceive they had not; whereby the Earl of Torrington may come to be tried for his life, for facts committed several months before this power was given or desired: we thinking it reasonable, that every man should be tried by that law that was known to be in force when the crime was committed.

2ndly, It is by virtue of the said Act of the 13 Car. II that the Earl of Torrington was judged by this House not to have the privilege of a Peer of this Realm for any offences committed against the said Act; and there is no other law, as we conceive, by which the said Earl could have been debarred from enjoying the privilege of a Peer of this Realm; which Act making no mention of Commissioners of the Admiralty, but of a Lord High Admiral only, by whose authority alone all the powers given by that Act are to be exercised, and without whose consent singly, no sentence of death can be executed, we think it of dangerous consequence to expound a law of this capital nature otherwise than the literal words do import. And, as we conceive it without precedent to pass even explanatory laws, much less such as have a retrospect in them, in cases of life and death, so we think it not at all necessary to make such a precedent at this time, there being an undoubted legal

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way already established to bring this Earl to a trial by a Lord High Admiral.

3rdly, The judges having unanimously declared that the law marine was nowhere particularized in their books, whereby the power or jurisdiction of the Lord High Admiral may be ascertained, so that the practice is all that we know of it, we conceive it unprecedented and of dangerous consequence, that the jurisdiction exercised by the Lord High Admiral should, by a law, be declared to be in the Commissioners of the Admiralty, whereby an unknown, and therefore unlimited power, may be established in them.

Charles Paulet, Duke of Bolton.  
Thomas Savage, Earl Rivers.  
Theophilus Hastings, Earl of Huntingdon.  
Aubrey de Vere, Earl of Oxford.  
Charles Gerard, Earl of Macclesfield.  
William Craven, Earl Craven.  
Thomas Grey, Earl of Stamford.  
Laurence Hyde, Earl of Rochester.  
Thomas Thynne, Viscount Weymouth.  
John Granville, Earl of Bath.  
John Egerton, Earl of Bridgwater.  
Henry Herbert, Lord Herbert of Chirbury.  
Thomas Sprat, Bishop of Rochester.  
Sir Jonathan Trelawny, Bishop of Exeter.  
Thomas Crewe, Lord Crewe.  
George Legge, Lord Dartmouth.  
Charles Granville, Lord Granville.

### LXXXIII.

OCTOBER 30, 1690.

On the 26th of October, 1689, the Commons impeached the Earls of Salisbury and Peterborough for high treason in having departed from their allegiance and being reconciled to the Church of Rome, and promise to send further articles against them at a convenient time. Lord Salisbury was already in the Tower, and Lord Peterborough was forthwith committed. It does not appear that their imprisonment was very strict. The Commons presented no further articles against them. On the 6th of October, 1690, the Earls petition the Lords for their release, alleging the Act of Indemnity as a plea (2 William and Mary, cap. x). The Judges are consulted, and give it as their opinion that the case of the Earls is covered as regards all offences committed before the 20th of February, 1689, except as regards acts done in Ireland and beyond seas. They are therefore admitted to bail, and on the 30th of October their

recognisances are vacated. The question really involved was the continuance of impeachment from Parliament to Parliament.

The following protest is thereupon inserted in the Journals.

1st, Because, we conceive, it is a question not at all relating to the real debate before us, but urged upon us, not for the sake only of the two Lords mentioned.

2ndly, Because we ought to have examined precedents of pardons, to see how far an impeachment was concerned, before we had adjudged the Lords discharged, or whether an impeachment could be pardoned without particular mention in an Act of grace, and what difference there is between an Act of grace and an Act of indemnity.

3rdly, Because we did not hear the House of Commons, who are parties, and who, in common justice, ought to have been heard before we had passed this vote.

Charles Paulet, Duke of Bolton.  
 Charles North, Lord North and Grey.  
 Thomas Grey, Earl of Stamford.  
 John Egerton, Earl of Bridgwater.  
 John Granville, Earl of Bath.  
 Charles Gerard, Earl of Macclesfield.  
 Charles Granville, Lord Granville.  
 Henry Herbert, Lord Herbert of Chirbury.

#### LXXXIV.

JANUARY 1, 1691.

Among the private Acts of 2 William and Mary is one (the twenty-fourth) incorporating the proprietors of the water-house in York Buildings, and for encouraging, carrying on, and settling the said waterworks.

On the third reading of the Bill the following protest was inserted.

1st, Because there is, in this Act, an arbitrary allowance left to the proprietors to exact what fines or yearly rents they please for serving the inhabitants with the said water.

2ndly, And that there is no provision in the said Act, that the proprietors shall engage for the making good the said leases and assuring the inhabitants they shall not want water, nor any to apply to for relief in case the inhabitants are injured for want of water, or by any unreasonable exactions of the proprietors.

Charles Bennet, Lord Ossulstone.

## LXXXV.

FEBRUARY 16, 1692.

The proceedings in the Duke of Norfolk's divorce case were protracted over more than eight years, for the royal assent was not given to the Bill till 1700. The particulars of the trial which took place in 1699, may be found in the State Trials, vol. v. p. 239. On the 16th of February, when the proceedings had reached a certain stage in the House of Lords, the Lords resolved that proxies should not be used in the proceedings on the Bill, and the following protest is entered.

1st, Because it is an inherent right of the Peers of England to be summoned to Parliament, and when they cannot attend in person, to be represented by their proxies; and no vote of the House of Lords alone can take away that right, which is established by the fundamental laws of our constitution.

2ndly, If that such a vote could abolish this right, yet it was against the rules of justice to make it without hearing the persons interested in it, especially the number being very great.

3rdly, If such a vote might be made, yet it was unreasonable for those Lords, who were against proxies, to make use of proxies in the previous question, which was, in effect, to make the Lords concerned to vote against themselves.

Charles Paulet, Duke of Bolton.  
Daniel Finch, Earl of Nottingham.  
John Sheffield, Earl of Mulgrave.  
John Egerton, Earl of Bridgwater.  
Thomas Savage, Earl Rivers.  
Vere Fane, Earl of Westmorland.  
Edward Montagu, Earl of Sandwich.  
Thomas Grey, Earl of Stamford.  
Algernon Capell, Earl of Essex.  
William George Richard Stanley, Earl of Derby.  
Philip Stanhope, Earl of Chesterfield.  
Charles Bodvile Robartes, Earl of Radnor.  
Francis Howard, Lord Effingham.  
Thomas Willoughby, Lord Willoughby of Parham.  
John Culpeper, Lord Culpeper.  
Robert Sutton, Lord Lexington.  
Thomas Lucas, Lord Lucas.  
John Berkeley, Lord Berkeley of Stratton.

## LXXXVI.

FEBRUARY 23, 1692.

A Bill for raising money by a poll, payable quarterly for a year, for carrying on a vigorous war against France, was introduced into the Lords on the 18th of February, and committed on the 20th to eleven Peers, with an instruction that the Committee should consider of expedients for the preservation of the privileges of the House in reference to the Bill. The poll was to be a tax of a shilling, quarterly levied on all persons with a few exceptions, besides extra sums charged upon persons of higher rank and wealth. The last clause of the Act (3 William and Mary, cap. vi) contains a proviso for taking accounts which is substantially the same as that embodied in a Bill which had already dropped, in consequence of disagreements between the two Houses.

Against this action the following protest is inserted in the Journals.

Because the substance of the proviso added at the end of the Bill, for taking the accounts of the public monies, hath been in a Bill by itself this present session of Parliament, which having not passed through the two Houses, by reason of their disagreement upon some amendments offered by the Lords to the said Bill, ought not, by the known and constant methods of proceedings, to be brought in again in the same session; and consequently, we conceive, the tacking of the said proviso to this Poll-Bill is unparliamentary, highly prejudicial to the privileges of the Peers, and may be of dangerous consequence to the prerogative of the crown.

Charles Beauclerk, Duke of St. Albans.  
 William George Richard Stanley, Earl of Derby.  
 Laurence Hyde, Earl of Rochester.  
 Thomas Bruce, Earl of Ailesbury.  
 Thomas Jermyn, Lord Jermyn.  
 Robert Leke, Earl of Scarsdale.  
 John Hough, Bishop of Oxford.

## LXXXVII.

FEBRUARY 23, 1692.

After alleging the necessity which there was for passing a Bill of Supply, notwithstanding the irregularity complained of in the last protest, the Lords make the following entry in their Journal. To prevent any ill consequences from such a precedent for the future, they (the Lords in Parliament) have thought fit to declare solemnly and to enter upon their books

for a record to all posterity, that they will not hereafter admit upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament.

But to this entry the following protest is made.

Because, we conceive, that an entry on the Journal of this House, to excuse the complying at this time in a thing so unparliamentary as the matter now in question is, upon the account of the present necessity or danger, how pressing or imminent soever, will be of no force to prevent the doing the same, when the like necessity or danger may be pretended; but the consenting once to such unprecedented proceedings may always be made use of, as one argument more for the agreeing to them for the future.

Charles Beauclerk, Duke of St. Albans, and the other names as before.

### LXXXVIII.

DECEMBER 7, 1692.

In his speech from the Throne, William had used language which seemed to suggest that the two Houses should advise him on the policy which he should follow, and on the 7th of December—the time of the Lords in the interval was chiefly occupied with the affairs of the Earls of Marlborough, Huntingdon, and Scarsdale—the House proceeded to ‘give advice to his Majesty upon consideration of the papers brought in by the Earl of Nottingham.’ A motion was thereupon made that there ‘should be a Committee of both Houses appointed to consider of the present state of the nation, and what advice to give his Majesty on it.’ The motion was negatived (See Macaulay, chapter xix) by 48 votes to 36.

A protest was thereupon entered.

1st, Because his Majesty having particularly and expressly desired the advice of his Parliament at this time, when he so much seems to need it, no other method was, or, in our opinions, could be proposed, by which the two Houses might so well, and so speedily, be brought to that concurrence which is necessary to render their advice effectual.

2ndly, Because it appears by some papers already imparted to this House, that several Members of the House of Commons are concerned in the matters before us, as having been so lately employed in his Majesty’s service; and we conceive it the easiest, properest, and fairest way of communication between the two Houses, to have so great and important a business transacted and prepared in a committee so chosen.

3rdly, Because it cannot be expected that so many Members of the House of Commons, from whom we shall need information, can, in any other manner, be here present so often, though with the leave of their House, as will be necessary for a sufficient enquiry into the several affairs now under consideration.

4thly, Because if the House of Commons intend also to give advice to his Majesty, it is very probable that both Houses of Parliament may receive such information severally, as will be thought fit to be communicated as soon as possible; and we conceive no way of doing that can be so proper or speedy as in a committee of both Houses.

5thly, Because in a time of such imminent danger to the nation, by reason of so many miscarriages as are supposed generally to be committed, the closest and strictest union of both Houses is absolutely necessary to redeem us from all that ruin, which, we have too much cause to fear, is coming upon us.

- Charles Talbot, Duke of Shrewsbury.
- John Sheffield, Earl of Mulgrave.
- Thomas Grey, Earl of Stamford.
- John Churchill, Earl of Marlborough.
- Thomas Bruce, Earl of Ailesbury.
- Henry Yelverton, Viscount de Longueville.
- Arthur Herbert, Earl of Torrington.
- Charles Cornwallis, Lord Cornwallis.
- Ralph Montagu, Earl of Montagu.
- John Vaughan, Lord Vaughan (Earl of Carbery).
- John Granville, Earl of Bath.
- Charles Mordaunt, Earl of Monmouth.
- Henry Booth, Earl of Warrington.
- Hugh Cholmondeley, Lord Cholmondeley (Visct. Cholmondeley).
- Charles Mildmay, Lord Fitzwalter.
- Thomas Crewe, Lord Crewe.
- Charles Granville, Lord Granville.

## LXXXIX.

JANUARY 8, 1693.

The Bill 'touching free and impartial proceedings in Parliament' was intended to exclude placemen from the House of Commons by rendering all Members of the House of Commons incapable of places of trust and profit, by expelling all those who received any such place, and making them incapable of sitting again in the current Parliament. There was a very general impression that the House was corrupted, that the Speaker

was the factor between the Court and the Members, and that the King practised bribery, while he lamented its necessity (See Burnet, Ralph, Macaulay). The last writer has given a sketch of the Bill from the archives of the Lords. It passed rapidly through the Commons, but was rejected in the Lords by two votes only.

The following protest was inserted.

1st, Because the principal objection made to this Bill was the great danger that might happen thereby, of the too long continuing this present Parliament, which is an ill consequence that we can no ways apprehend, since we hope and humbly conceive, his Majesty will never be capable of taking any advice of that kind, so plainly destructive to the subjects' just rights of election to frequent Parliaments, and so many ways inconsistent with the good of this nation.

2ndly, Because we are not only very sensible of the just occasion given for such an Act (though we are loth to enlarge upon so tender a subject), but have good reason to believe the House of Commons would not have begun and passed a Bill of this nature, where the Members of that House are so particularly concerned, without having been fully satisfied in the reasons for it, and plainly convinced of that great need the people of England are in, at this time, of so just and wise a provision.

Henry Booth, Earl of Warrington.  
George of Denmark, Duke of Cumberland.  
John Sheffield, Earl of Mulgrave.  
Thomas Bruce, Earl of Ailesbury.  
Thomas Tufton, Earl of Thanet.  
Thomas Savage, Earl Rivers.  
Basil Feilding, Earl of Denbigh.  
John Churchill, Earl of Marlborough.  
Thomas Grey, Earl of Stamford.  
Ralph Montagu, Earl of Montagu.  
Henry Yelverton, Viscount de Longueville.  
Hugh Clifford, Lord Clifford of Chudleigh.  
John Ashburnham, Lord Ashburnham.  
John Vaughan, Lord Vaughan (Earl of Carbery).  
Hugh Cholmondeley, Lord Cholmondeley (Visct. Cholmondeley).  
Charles Mildmay, Lord Fitzwalter.  
Thomas Thynne, Viscount Weymouth.  
John Arundel, Lord Arundel of Trerice.  
Edward Montagu, Earl of Sandwich.  
Charles Dormer, Earl of Carnarvon.

## XC.

JANUARY 31, 1693.

The trial of Lord Mohun for aiding and abetting one Captain Richard Hill in the murder of William Mountford, an actor, is to be found at length in the State Trials, vol. iv. p. 508. On the 9th of December, Lord Mohun and Hill attempted to kidnap Mrs. Bracegirdle, the actress, and Mountford was killed by Hill in defending her. Hill escaped, and Lord Mohun, who had been wounded the day before in a duel with Lord Kennedy, was at first bailed by the justices at Hick's Hall, but was again committed by warrant of the Chief Justice. The trial was continued from the 31st of January to the 4th of February, when sixty-nine Peers found him not guilty and fourteen guilty. The widow of Mountford procured a writ of appeal against this judgment, but seems to have withdrawn it. According to Luttrell (17th of October, 1693), her father, one Percival, an actor, was convicted of clipping, and sentenced to death, and he adds that 'Mrs. Mountford hath petitioned the Queen for her father's pardon, which believed may be granted if she withdraw her appeal against Lord Mohun.' The effect of an appeal would have been that Lord Mohun could have been tried on the capital charge again, and on this occasion by a common Jury. I find no further notice of the case, beyond the fact that Percival was reprieved on the 22nd of October. On the 14th of September, 1697, Lord Mohun killed a Captain William Hill of the Foot Guards in a drunken brawl at a Charing Cross Tavern, was committed to the Tower, and was indicted for murder. He obtained the King's pardon, and was allowed to plead it at the Bar on the 4th of July, 1698. On the 15th of November, 1712, he challenged the Duke of Hamilton, and in a duel in Hyde Park both parties were killed. For the political effects of this duel, see Swift's Journal to Stella. Lord Mohun was employed in several military commands.

In the proceedings immediately before the trial, when the bishops had withdrawn under protestation, the question was put whether the House shall now go on, and the question was resolved in the negative, when the following short protest was inserted.

Because it may be of dangerous consequence in case of blood.

Thomas Herbert, Earl of **Pembroke**.  
 Charles Seymour, Duke of **Somerset**.  
 Henry Howard, Duke of **Norfolk**.  
 George Savile, Marquis of **Halifax**.  
 Theophilus Hastings, Earl of **Huntingdon**.  
 William Russell, Earl of **Bedford**.  
 William Cavendish, Earl of **Devonshire**.  
 Charles Sackville, Earl of **Dorset**.  
 John Egerton, Earl of **Bridgwater**.  
 John Sheffield, Earl of **Mulgrave**.  
 Richard Lumley, Earl of **Scarborough**.

Vere Fane, Earl of **Westmorland**.  
Charles Bodvile Robartes, Earl of **Radnor**.  
John West, Lord **Delawarr**.  
Charles Cornwallis, Lord **Cornwallis**.  
Charles Mordaunt, Earl of **Monmouth**.  
Charles Talbot, Duke of **Shrewsbury**.  
John Arundel, Lord **Arundel of Trerice**.  
George Fitzroy, Duke of **Northumberland**.  
Anthony Grey, Earl of **Kent**.

## XCI.

MARCH 8, 1693.

The history of the events connected with the licensing of books is told in Macaulay, chapter xix. A temporary law which was on the point of expiration had enacted a licenser's office for the press, and the question came before Parliament whether this agency should be resumed. In the end the censorship was continued for two years. During the passing of the Act two provisoës were offered and rejected.

On this the following protest was inserted in the Journals.

Because the following provisoës were not admitted.

' Provided always, That no search shall be at any time made in the house or houses of any of the Peers of this realm, by virtue of the said act of printing, without oath being first made, any thing herein to the contrary thereof in any wise notwithstanding.'

' Provided always, and be it enacted by the authority aforesaid, That if the names of the printer and the author of any book be affixed to, and printed in the same book, that then, and in such case, it shall not be necessary to take out a license for the printing the said book.'

And we conceive, that the benefit which may accrue to the public by the continuance of the several Acts mentioned in the Bill, will not countervail the prejudice there may be in many respects by rejecting the aforesaid clauses, which we offered as amendments to the Bill for preventing abuses in punishing seditious, treasonable, and malicious books and pamphlets, and for regulating of printing and printing-presses.

Because it subjects all learning and true information to the arbitrary will and pleasure of a mercenary, and, perhaps, ignorant licenser, destroys the properties of authors in their copies, and sets up many monopolies.

John Sheffield, Earl of **Mulgrave**.

Thomas Grey, Earl of **Stamford**.  
 George Savile, Marquis of **Halifax**.  
 Charles Gerard, Earl of **Macclesfield**.  
 John Vaughan, Lord **Vaughan** (Earl of Carbery).  
 Francis Fiennes Clinton, Earl of **Lincoln**.  
 John Churchill, Earl of **Marlborough**.  
 Charles Benet, Lord **Ossulstone**.  
 Robert Carey, Lord **Hunsdon**.  
 Charles Granville, Lord **Granville**.  
 Charles Talbot, Duke of **Shrewsbury**.

## XCII.

NOVEMBER 23, 1693.

One among the privileges of Parliament extended protection from civil process during the session of Parliament to the Members of both Houses and their servants. For the history and growth of these privileges, see Hatsell's precedents. The same privilege was claimed by the King's servants, and application was from time to time made to the House of Lords for protection against process. On the 23rd of November in particular, such a protection was given to Piers Mauduit, Windsor Herald, on a report from the Committee of Privileges. But on the same 23rd of November the House added to their standing orders 'that this House will not receive any petition for protecting their Majesties' servants.' The fifth reason in the protest below was expunged from the Journals by a vote of the 30th of November.

Against which order, the Lords, whose names are subscribed, do enter their protestations for these reasons :

1st, That it hath been usual in all times to relieve the King's servants in these cases, upon their petition in Parliament.

2ndly, That this order seemed to us to be grounded upon a mistake, which was, That the King's servants in ordinary were reliev- able otherways, that is, the servants above stairs by the Lord Chamberlain, and those below by the Lord Steward and the Board of Greencloth, which is found impracticable, for neither the Lord Chamberlain's order, nor the order of the Board of Greencloth, can discharge any of the King's servants that are imprisoned for debt ; all that they have ever done, or can do, is to commit those who arrest them to safe custody, who may redeem themselves (and have often done) by *habeas corpus* the next day, and consequently the servant left without remedy.

3rdly, Whereas it hath been suggested, That at least four hundred

of the King's servants may claim freedom from arrests, and consequently this House be too much burthened with their petitions; that number seems to comprehend the extraordinary servants also, who claim no privilege, and are declared by an order of council, made in King Charles the Second's time, to be incapable of protection from their just debts: whereas the servants in waiting are a far less number, and experience hath shewed us, that this House hath not been troubled with above two or three of their petitions, at most, in any one Session.

4thly, It seems unreasonable to us, that the King (who is the head of the Parliament) should have his servants in ordinary taken from him, more than is suffered to any Member of either House of Parliament.

*5thly, That this House will not receive any petition for protecting the King's servants, seems to us to bear hard upon their Majesties' privileges, no reason being given for the same.*

Henry Howard, Duke of Norfolk and Earl Marshal.

Vere Fane, Earl of Westmorland.

Francis Newport, Viscount Newport.

Charles Gerard, Earl of Macclesfield.

Peter Mews, Bishop of Winchester.

Edward Stillingfleet, Bishop of Worcester.

John Hough, Bishop of Oxford.

Symon Patrick, Bishop of Ely.

John Moore, Bishop of Norwich.

Thomas Tenison, Bishop of Lincoln.

### XCIII.

DECEMBER 22, 1693.

The Duke of Grafton was killed at the seige of Cork, in 1690, and we learn from Luttrell that his widow forthwith received a good pension from the King on account of her husband's death. Among other grants she had a patent for coining 3d. and 2d. pieces in November, 1692. She was the only daughter and heiress of Lord Arlington. It appears from the same authority that she had claims to an office in the King's Bench through her trustee, and that she was deprived of this office through or by the instrumentality of Chief Justice Holt, and that she sought her remedy in the Lords. Luttrell tells us that she effected a compromise with the Chief Justice, that she withdrew her petition, that the Chief Justice and his brothers who are to execute the place pay her £1,500 a year during their lives, and that she is to have the whole profits afterwards.

The following protest is against permitting the withdrawal of the petition.

Because we conceived it proper, at the time that leave was granted to withdraw the petition, that an order should be given to have a further information brought before this House, of the proceedings of the Judges of the King's Bench, in the case of William Bridgeman and Rowland Holt, and others, in order to have directed a criminal prosecution against the said Judges, in case the House should have thought fit to proceed so far against them.

Robert Leke, Earl of Scarsdale.  
 Charles Gerard, Earl of Macclesfield.  
 Thomas Watson, Bishop of St. David's.  
 Charles Seymour, Duke of Somerset.  
 Laurence Hyde, Earl of Rochester.  
 Thomas Bruce, Earl of Ailesbury.  
 Thomas Thynne, Viscount Weymouth.  
 John Churchill, Earl of Marlborough.  
 John Ashburnham, Lord Ashburnham.  
 William Maynard, Lord Maynard.  
 Charles Finch, Earl of Winchilsea.

## XCIV.

JANUARY 5, 1694.

In bringing forward anew the Bill for free and impartial proceedings in Parliament, the Speaker of the House of Commons was exempted from those provisions of the Bill, which rendered all Members of the House thenceforward incapable of taking any office. The Commons allege as a reason, when the Lords object to this, that the Speaker is generally a lawyer of eminence, and is hindered from practice, and that to make him incapable of office or employment would be to narrow the choice of the Commons. The Lords give way, and the following protest is entered.

Because, that an Act complains of corruption in former Parliaments, and designs to provide against it for the future, ought not, in our opinion, to contain a clause to allow any one Member of the House of Commons to be excepted from the general rules prescribed to hinder all the Members from taking employments, especially the Speaker of that House, who, if he can be capable of being corrupted, may, by himself alone, do much more mischief than a great many of the Members can do together; and this clause allowing the Speaker of the House of Commons to be capable of such prefer-

ments, advantages and employments, which all other Members are debarred from, by virtue of this Act, seems to establish the possibility of corruption in him by a law; which we conceive would be scandalous for the present, and of very dangerous consequence in times to come.

Laurence Hyde, Earl of Rochester.  
Henry Compton, Bishop of London.

The King refused his assent to the Bill. See Macaulay, chapter **xx.** The action was vehemently debated in the Commons (see Parliamentary History of the 26th of January, 1694), and a representation to the King drawn up, which was next day carried, and presented to William.

## XCV.

JANUARY 10, 1694.

The Lords resolved on this day that 'the admirals who commanded the fleet last summer have done well in the execution of the orders they received.' The events referred to will be found in Ralph, vol. ii. page 455 sqq.

The following protest was inserted.

1st, Whereas by an order of the Admiralty, bearing date the 19th of May last, the admirals were to direct Sir George Rooke, that after their parting with him, he should steer such a course for his passage to Cadiz, as should be thought most safe by a council of war, with relation as well to the Brest fleet, if gone out to sea, as to the Thoulon squadron: it does not appear to us, that there has been any council of war from the two-and-twentieth of May to the fourth of June, which was the day the signals were given for their parting from the Straights fleet; which last council of war was not called till after the signals for parting were given, and occasioned by the accident of the Turkey fleet's being becalmed.

2ndly, That though it does appear by the result of the council of war, of the fourth of June, that they had no intelligence where the enemy was, yet notwithstanding we do not find in that council, it was so much as proposed, how to get intelligence where the Brest fleet was, pursuant to the order of the Admiralty of the nineteenth.

3rdly, We conceive it to be the duty of an admiral or general to use his utmost endeavours to discover the motions of an enemy, without an order from his superiors, and much more when he has one.

6thly Their not sending one or more good sailors to find out if the French fleet were sailed from Brest, & also what course they steered, or so to give intelligence to our main fleet at a station appointed, before they parted with Sir George Rooke, was as we conceive the chief cause of the misfortune that happened to the Turkey fleet.

7thly, It appears by the admiral's own letters to the Admiralty, of the fourteenth of July and eighteenth of September last, that at a council of war, held on the two-and-twentieth day of May, they were of opinion, that that part of the Admiralty's order of the nineteenth, which related to the course Sir George Rooke was to steer, was unreasonable and impracticable, yet they did not send up to have it explained, though the fleet did not sail till the thirtieth: this looks as if they rather designed an artificial excuse for doing nothing, than the discharge of the trust reposed in them.

8thly, That Sir George Rooke's narrative, which might have given a further light to the inquiry into the admiral's conduct last summer, was not allowed to be read.

9thly, This vote seems to approve of the behaviour of the admirals in the last summer's expedition, which differs, as we conceive, from the opinion the greatest part of Europe has of it, and may be of ill consequence, by giving our allies no very fair prospect of better success.

10thly, Because by this vote is prevented any further inquiry into the last year's misfortunes, relating to the admirals, if any new matter should arise from new evidence; and it may stop any prosecution of the King's, in case he should think fit to proceed further in that affit.

Charles Boyle, Duke of **Merton**.  
Antoine de Vion, Earl of **Oxford**.  
William Chetwode, Earl of **Devonshire**.  
John Egerton, Earl of **Bridgewater**.  
William Wentworth, Earl of **Stratford**.  
Hugh Molyneux, Lord **Clifford of Chudleigh**.  
Thomas Grey, Earl of **Stamford**.  
Charles Berkeley, Lord **Berkeley of Berkeley**.  
Charles Throckmorton, Lord **Overton**.

## XCVI.

MARCH 14, 1694.

The following order was made on this day : ‘That no Lord shall enter any written protection in the book of Protections, until after he shall have personally attended this House in the same session of Parliament.’ Some such Lords had been summoned, and most of them, as appears from the Journals, did not obey the summons.

The following protest was entered.

That the taking off any part of the undoubted privileges, which every Peer of England enjoys by his birth-right, by a vote in a pretty thin House, especially when a Peer of this House moved on the behalf of the absent Lords, that a day might be appointed for the debate of the matter in which they were so much concerned, seems in the manner of it to make too light of what this House ought to esteem so sacred as the privileges of the Peerage of England.

Henry Howard, Duke of Norfolk, and Earl Marshal.

## XCVII.

DECEMBER 18, 1694.

The Bill for the frequent meeting and calling of Parliaments, i.e. the Triennial Bill, was passed on this day.

The following protest is entered.

We do dissent from this vote, because it tendeth to the continuance of this present Parliament longer than, as we apprehend, is agreeable to the constitution of England; besides the ill consequences which, in many respects, may attend it.

William Cavendish, Duke of Devonshire.

George Savile, Marquis of Halifax.

Thomas Bruce, Earl of Ailesbury.

Thomas Thynne, Viscount Weymouth.

## XCVIII.

JANUARY 19, 1695.

A Bill had been introduced into the House, under which wilful and corrupt perjury, in certain cases, was made felony, but a motion to engross it was rejected.

On this the following protest is inserted.

Because it has appeared by too many instances, not only in former times, but also very lately, how great need there is of such a Bill as this, to deter men from those pernicious crimes of perjury and subornation.

Thomas Osborne, Duke of Leeds (President).  
 Charles Paulet, Duke of Bolton.  
 William Cavendish, Duke of Devonshire.  
 John Sheffield, Marquis of Normanby.  
 Nicholas Strafford, Bishop of Chester.  
 Charles Seymour, Duke of Somerset.  
 John Culpeper, Lord Culpeper.

## XCIX.

FEBRUARY 18, 1695.

The story of the Lancashire plot is to be found in Ralph, vol. ii. 525 sqq., in Luttrell, and in Macaulay, chapter xx. The House resolved as follows on the subject, 'That it is the opinion of this House that the judges who have any ways acted in relation to the Lancashire trials have done their duty according to law.'

Upon which the following protest is entered.

1st, Because, we conceive, that a witness, who, in open court, did twice mistake the prisoner at the Bar, against whom he was a witness, ought not to be recommended from a judge to a jury, as a witness not to be excepted against. And,

2ndly, Because there appeared several hard circumstances in the proceedings, and particularly the refusing to cause the witnesses to be examined apart, when desired by the prisoners, which in a constitution, where the judges ought to be of counsel for the prisoners, seems to be contrary to the intent of the law for the security of the innocent, and, that in consideration, may be of too ill consequence to receive countenance in this supreme court.

Edward Montagu, Earl of Sandwich.  
 Francis North, Lord Guilford.  
 Laurence Hyde, Earl of Rochester.  
 Daniel Finch, Earl of Nottingham.

## C.

MARCH 19, 1695.

In November, 1694, Sir Richard Verney claimed the title of Lord Willoughby de Brooke as heir general of (through his grandmother, Margaret Greville, sister of Lord Brooke of Beauchamp Court, so created by James I, but really the representative of) Robert Willoughby de Brooke who was summoned by writ to Parliament, 7 Henry VII. In his petition addressed to the King he explains that the delay in claiming the title was due to the interruptions of Parliament, and 'the minority of the three last heirs of the Verneys.' The King, according to settled custom, referred the petition to the Peers, where it was read and entered on the Journals on the 11th of December. There was in existence a Lord Brooke of Beauchamp Court, the ancestor of the present Earl of Warwick, but this nobleman had inherited the peerage from the first Lord Brooke by virtue of certain limitations in the patent. On the 10th of January the Lords resolved 'that Sir Richard Verney hath no right to a writ of summons to Parliament,' and a committee was appointed to report thereon to the King. On the 13th of February, this committee was revived, and it was resolved on the 20th of February, that the question raised by certain Lords as to baronies by writ should be discussed on the 26th of February, but it was put off till the 19th of March, on which day the following question was put, 'Whether if a person summoned to Parliament by writ and sitting, die, leaving issue two or more daughters, who all die, one of them only leaving issue, such an issue has a right to demand a summons to Parliament.' And the question was affirmed. On this certain Lords protest as follows.

1st, Because, we conceive, it is more suitable to the methods of all courts of justice, and therefore particularly more proper for this supreme court to give judgment in particular cases, when they are brought to be tried before them, than to make a general rule, which possibly may not comprehend all future accidents, and may be liable to many great inconveniences that cannot now be foreseen, and which, in its nature, seems to be matter fitter to be provided for by a law than a judgment.

2ndly, And because there were several precedents offered to be produced, to shew that the practice, upon several occasions, had been directly contrary to this rule, and because the heralds, who, we conceive, disproved the printed precedents, were not allowed time to produce precedents to shew where baronies descending to several daughters were extinguished, and new creations of those titles given to others.

3rdly, Because, we conceive, this general rule now made, is in

opposition to a judgment solemnly given by this House, upon hearing counsel on all sides, in a particular case lately referred by the King; and is grounded on a bare motion made by some Lords, who, we conceive, were no ways concerned in that judgment.

4thly, Because the last rule does likewise seem to us to be repugnant to the judgment of this House in the case between the Earl of Oxford and Lord Willoughby of Eresby, then referred to this House by King Charles I, and by their Lordships thought fit to be referred to the consideration of the judges, as a matter of that importance that deserved their assistance; who, upon mature deliberation, returned their opinion to their Lordships in these words, viz.

'As to the baronies of Bulbeck, Sandford, and Badlesmere, our opinion is, that the same descended to the general heirs of John, the fourth Earl of Oxford, who had issue John, the fifth Earl of Oxford, and three daughters; one of them married to the Lord Latimer, another to Winckfield, and another to Knightley: which John, the fifth Earl of Oxford dying without issue, those baronies descended upon the said daughters as his sisters and heirs, but those dignities being entire, and not dividable, they became incapable of the same, otherwise than by gift from the Crown, and they, in strictness of law reverted unto, and were in the disposition of King Henry VIII, and yet, nevertheless, we find that four several Earls of Oxford successively, after that descent to three daughters, as heirs males of the said Earldom, assumed and took upon them those honours and titles in their writings, leases and conveyances; and their eldest sons have been stiled, in the lifetime of their fathers, by the name and title of Lord Viscount Bulbeck, and so reputed to be.'

And the House did vote that the baronies were in his Majesty's disposition, and, in their report to the King, did declare, that for the baronies, they were wholly in his Majesty's hand to dispose at his own pleasure.

5thly, Because, we conceive, that it is not in the power of this House either to explain or repeal an Act of Parliament, though a private Act, in a judicial manner, but only in our legislative capacity; and there being an Act passed in 15 Charles II, No. 15, for settling the lands of the Earl of Kent, which disposes of the barony of Lucas of Crudwell, and declares the King's power to dis-

pose of the barony, when more than one female heir, to whom, or to which, he pleases, or to hold in suspense, or to extinguish the same ; we cannot but think this vote is in direct opposition to that Act.

Henry Howard, Duke of Norfolk and Earl Marshal.  
John Egerton, Earl of Bridgwater.  
Thomas Grey, Earl of Stamford.  
Fulke Greville, Lord Brooke of Beauchamp's Court.  
Laurence Hyde, Earl of Rochester.  
Arthur Herbert, Earl of Torrington.  
Henry Herbert, Lord Herbert of Chirbury.  
Richard Lumley, Earl of Scarborough.

## C.I.

APRIL 18, 1695.

The City of London made a lease of certain lands in Conduit Mead at the back of Clarendon House, to the Marquis of Normanby (John Sheffield), for the purpose of building a house there. It seems that the land, five acres, was let for forty shillings a year for a term of 100 years, on certain considerations, one of which was the procuring an Act of Parliament to secure certain titles, and to protect a supply of water ; and it was alleged that the Marquis had done the city great service, and had been a great friend to the city in passing the Orphans' Bill. The lease was to commence at the conclusion of a lease granted to Edward, Earl of Clarendon, which terminated in 1705, and its terms are to be found in the Journals. The whole transaction was supposed to be connected with the Orphans' Bill of the City of London, the discovery that Trevor the Speaker had been bribed, and the strong suspicion that the Duke of Leeds and Seymour were equally culpable. The allusion to the 'convex lights,' refers to the fact that the transactions in which Trevor was implicated were set on foot by the City Light Company. The question was put, 'Whether upon the examination taken in relation to the matter of the convex lights, while the Orphans' Bill was depending in this House, or concerning a lease of some lands lately passed to the Lord Marquis of Normanby, by the City of London, there does appear any just cause of censure from this House, upon the said Lord Marquis of Normanby,' and was resolved in the negative.

On this the following protest is entered.

Dissentient : Because we humbly conceive it to be an offence of an high and extraordinary nature, that any Peer should presume to deliver the opinion of this House, without doors, to persons whose cause has been pleaded at the Bar, so as to induce them to compound their interest, or oblige them to unwilling compliances, more

especially in a matter depending before us, in a Bill agreed to by the House of Commons. Which we humbly conceive to have been plainly made out against the Marquis of Normanby, by the depositions of Mr. Hobbs, Sir Thomas Millington, Mr. Nois, and Mr. Lilly.

Mr. Hobbs having informed this House, upon oath, ‘that he was absent and sick, and had resolved to come to no agreement with Hutchinson, but that Sir Thomas Millington had some time afterwards given him this account, that the Marquis of Normanby came out several times from the House of Lords, assuring him the Bill would not pass, unless an agreement was immediately made with the said Hutchinson, which, with the clamours without doors, were the reasons that compelled him, and those others that signed, to agree.’

Sir Thomas Millington having declared, upon oath, ‘that he was forced and compelled to sign the aforesaid agreement, by frequent intimations and assurances given by the Marquis of Normanby, that the Bill should, or would not pass, unless he and his partners did agree with Hutchinson, as likewise by the clamours, without doors, of those concerned for the passing of the Orphan Bill.’

Mr. Nois (agent for the orphans) likewise deposing, ‘that he heard the Marquis of Normanby tell Sir Thomas Millington, the Bill would be lost, unless the aforesaid agreement was concluded;’ both affirming that no other Member of the House of Lords, to their knowledge, gave any such intimation or account.

Mr. Lilly also deposing, that all present were forced to sign a paper (which he hoped would prove no agreement) because they were compelled to it by the tumults at the doors of the House of Lords, being afraid of violence from the orphans’ agents and solicitors in case they had not signed it.

Which irregular proceeding of the Marquis of Normanby, we conceive fully proved by witnesses of undoubted reputation, who acted in pursuance of the account they gave upon oath; which are the more remarkable, because it appears that Roman Russel, servant and agent to the said Lord, had one 32nd part made over to him immediately, before the hearing in the House of Lords; which share was assigned to Mr. Moore, by Hutchinson, to be made over for promoting his interest in Parliament, and was to that purpose

(as the writing testifies) disposed of to Roman Russel, which we conceive, by the proofs, valuable two thousand pounds.

Which share, Mr. Moore deposes, was given to Roman Russel, and Russel confesses to have received for no other consideration but (having been servant to many lords) to solicit and apprise them of the case ; yet it appears by his own confession he knew not the merits of the cause, nor could name any other lord whom he had applied to, but the Marquis his master, who brought in the petition for Hutchinson, Roman Russel having acquainted him he had a concern with him.

We likewise protest against this vote, in relation to the second part of it, which concerns the lease made by the City to the Marquis of Normanby.

Because we conceive it a present avowedly given to the said Marquis, for gratifying him for services done to the City, in the House of Lords, and for the expectation of like services for the future, and by him received as such ; which we are humbly of opinion is sufficiently proved, and in such manner, as we apprehend, highly to the dishonour of this House.

First, This appears by the entries in the city books, where it was agreed by the committee of the city lands, to demand an extraordinary power of the common council, to grant a lease under such extraordinary conditions, as were not agreeable to their common methods : in which entry, the only motive and argument that appears in the books is expressed in these words, viz.

*Com' Concil' tent' 24° Die Jan. 1693.*

At a common-council,

' A motion was made for gratifying a person of honour, who had been very friendly to the interest of the City, in the House of Lords, and likely to continue so, with a long term of years in about two or three acres of the city ground, lying and being in Conduit Mead, behind Clarendon House.

The question being put, whether this court will empower the committee, for settling and demising the city lands, to grant unto the said Lord an additional term in the said ground, at and under such rents, covenants, and conditions, as the said committee shall approve of ?

It was carried in the affirmative.

And referred to the committee accordingly.'

And likewise the same is again entered in the books in the last determination of the committee for city lands, as the only motive to induce them to make such a grant, in these words, viz.

' It being by special order of this honourable court referred to us, in order to the gratifying a person of honour, who hath been very friendly to the interest of the city, in the House of Lords, and is likely to continue so, &c.' and signed by Sir Robert Clayton, and several of the parties consenting to this lease, who were summoned as witnesses by the Marquis of Normanby.

It being further made evident (as we humbly conceive) by the oaths of Mr. Lane, the city comptroller, Mr. Morrice, a Member of the House of Commons, and Mr. Ballow, one of the committee, who depose, the arguments made use of for this lease, in several meetings of the committee, were the services done, and like to be done the city by the Marquis of Normanby ; particular mention being made in their depositions of his assistance in flinging out Gulston's Bill, and his helping that of the orphans.

And we further conceive (with great deference to this honourable House) that the motives and considerations, sworn by several of the committee-men, who were consenting to such grant or lease, as inducements to them to pass it, appear upon examination to be no valuable considerations.

As, the building a great house of thirty or forty thousand pounds upon the lands, the securing their water-pipes, the obtaining several years arrears of rent, the making a brick drain ; which alleged considerations seem to us of no weight, the Marquis being under no covenant in his lease to build such house, the pipes for their water being secured for seventy years to come, by their former lease, the arrears having been paid, not by the said Marquis, but by the tenants under the first lease, when demanded.

And moreover, in our humble opinion, there is little room to doubt, but that the said lease was given and taken as a gratification, Mr. Lane giving it in, upon oath, from the Marquis of Normanby's own mouth, that he looked upon the lease as a present to him from the city for his kindnesses and services, and that they were suitors to him, not he to them.

Finally, We are rather convinced of it, because the depositions of Mr. Lane, Mr. Morrice, and Mr. Ballow, are suitable to the entries in the city books, which most of the evidence summoned for

the Marquis of Normanby have set their hands to, where no mention is made of those other matters sworn by them as considerations inclining them to grant such lease.

Induced by these parts of the evidence recited (having entered the whole upon our book) that nothing might be concealed which may any ways tend to the justification of the noble lord concerned, and for the reasons aforesaid, we protest against this vote, not being able to satisfy ourselves, that this high court of honour and judicature had no just grounds to pass some censure on the Marquis of Normanby, upon the evidence given to this House, on the matters of the convex lights and city lease.

Charles Montague, Earl of Manchester.

Thomas Grey, Earl of Stamford.

Algernon Capell, Earl of Essex.

Thomas Bruce, Earl of Ailesbury.

Charles Mordaunt, Earl of Monmouth.

Arthur Herbert, Earl of Torrington.

Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.

Thomas Thynne, Viscount Weymouth.

A share in the Light Company was, it was said, worth £1,000 before the Bill passed, and one witness deposed that he gave £1,200 for one. Lord Normanby's speech is to be found in the Parliamentary History, vol. v. p. 949.

## CII, CIII.

JANUARY 9, 1696.

The reformation of the currency in England had become a matter of urgent necessity, and the details of the reform were worked out with great boldness and success by Charles Montague, afterwards Lord Halifax. In the passage of the Bill through the Lords two amendments were introduced; one which made good the deficiencies of all clipped money whatsoever, as well as that which was paid to the King in taxes, &c.; the other allowing the exportation of the coin for a limited time only. The Lords do not insist on these amendments, objection having been taken to them by the Commons.

Hence the following protests.

Because, we conceive, that though in the Bill for new regulating the coin of this Kingdom, the Commons having taken care to make good the deficiencies of such clipped monies only as were to be paid to the King on the account of his Majesty's revenues or taxes, it was agreeable to common equity and honesty, that provision should

be made to supply the deficiencies of all other clipped monies whatsoever, that were to pass in payments among the subjects of this Kingdom ; and therefore we could not consent to the leaving out this clause that had been added to the Bill by the Lords, which had so impartially taken care of the benefit and advantage of the subject in general, so much for the honour and justice of the House of Peers.

Laurence Hyde, Earl of Rochester.  
Evelyn Pierrepont, Earl of Kingston.  
John Churchill, Earl of Marlborough.  
Henry Compton, Bishop of London.  
Hugh Clifford, Lord Clifford of Chudleigh.

Because we conceive it inconsistent with the rules of common prudence, when the Bill for new regulating the coin of this Kingdom provides, That all the clipped money should be re-coined up to the old standard of the Mint, there should not be a liberty granted by law to export the coin of this Kingdom, while the occasion lasts of supporting so great an expense for the armies abroad ; and so long as the exportation of bullion is permitted, and that of coin prohibited, it seems to us undeniably, that the coin must be melted down again into bullion, which, we conceive, will be more prejudicial to the nation, and not so easily to be drawn back by a balance of trade, as if that wealth were preserved in the coin of this Kingdom.

Laurence Hyde, Earl of Rochester.  
John Churchill, Earl of Marlborough.

#### CIV.

JANUARY 17, 1696.

Sir Richard Verney presented his petition anew on the 9th of January, and it was referred, as before, by the King to the House of Lords. On the 17th of January the House took the case into consideration, and a question being put whether Sir R. Verney should be heard by counsel, it was resolved in the affirmative by 47 to 20 votes.

On this the following protest is inserted.

1st, Because, as it seems to us, the petitioner's case has been already heard and adjudged in this House, upon his former petition, whereby he claimed to have a writ of summons to Parliament, from the same ancestor, by the same pedigree, and under the same writ of summons, by which he makes his claim in this petition.

2ndly, Because the judgment given by this House, upon Sir Richard Verney's former petition, was not, that he had no right to a writ of summons, by the name of Lord Brooke, but generally, that he had no right to a writ of summons upon his case, as stated in his petition.

3rdly, Because, we conceive, it may tend infinitely to prejudice the judicature of this House, and to weaken the security that all subjects have by the judgments of this great court, if the Lords shall permit judgments once given, in so solemn a manner, to be reviewed.

Charles Paulet, Duke of Bolton.  
Charles Seymour, Duke of Somerset.  
William Cavendish, Duke of Devonshire.  
Henry Howard, Earl of Suffolk.  
Charles Montagu, Earl of Manchester.  
Thomas Grey, Earl of Stamford.  
Charles Mordaunt, Earl of Monmouth.  
Francis Newport, Earl of Bradford.  
Charles Gerard, Earl of Macclesfield.  
John Culpeper, Lord Culpeper.  
John Egerton, Earl of Bridgewater.

## CV.

JANUARY 24, 1696.

The clause complained of in the subjoined protest is contained in an Act of Parliament, 7, 8 William III, chapter 7, under the title of 'An Act to prevent false and double returns of Members to serve in Parliament.' The Bill was reported by the committee as 'fit to pass, without any amendment.' The objection in the protest is part of the ancient jealousy entertained by the Upper House as to the claim of any jurisdiction under any colour or pretext by the Commons. The Bill was carried by 27 to 20.

We whose names are underwritten do protest, for the reasons following :

By reason of a clause in this Bill, which enacts in these words following :

'In case that any person or persons shall return any member to serve in Parliament for any county, city, borough, cinque-port or place, contrary to the last determination in the House of Commons, of the right of election in such county, city, borough,

cinque-port, or place, that such return so made, shall, and is hereby adjudged to be a false return.'

To which we cannot agree, because, we conceive, that the confirming by Act of Parliament the proceedings in another place, which have never been examined here, is derogatory to the dignity and inconsistent with the justice of the House of Peers. And,

Because the enacting that the last determination of the House of Commons, in the case of returns of members to sit in that House, shall be made the rule for the future, seems to us, to erect a court of judicature there, which, by the constitution of the Government, and the constant practice of all ages to this day, hath never yet been allowed in the House of Commons, and may contribute to the introducing of evil precedents, and be of dangerous consequence hereafter.

Thomas Watson, Bishop of St. David's.  
 Laurence Hyde, Earl of Rochester.  
 John Granville, Earl of Bath.  
 Robert Shirley, Lord Ferrers of Chartley.  
 John Granville, Lord Granville.  
 John Jeffreys, Lord Jeffreys.

## CVI.

FEBRUARY 13, 1695.

On the 3rd of February the House resolved 'that according to the former judgment of this House Sir Richard Verney hath no right to a writ of summons to Parliament by the title of Lord Brooke,' but decided to hear him again, by counsel. On the 13th of February, however, the House reversed its former decision, and decided that he had a right to a writ of summons. On this the following protest is inserted.

1st, Because it is apparent, by the ancient Journals of the Lords' House, that Sir Robert Willoughby, the petitioner's ancestor, and his son and grandson, sat in the House by the name of Lords Broke, and never by Lord Willoughby de Broke.

2ndly, We conceive, no lord, whose ancestors were called to the Lords' House, by writ of summons, can claim a writ by descent from those ancestors, to sit in the House by any other name than those ancestors sat by.

3rdly, The House having, in the last Parliament, adjudged that

the petitioner had no right to a writ of summons to Parliament, when he petitioned to be summoned as Lord Broke, we conceive he can sit by no title at all.

Charles Seymour, Duke of **Somerset**.  
 Thomas Grey, Earl of **Stamford**.  
 John Egerton, Earl of **Bridgwater**.  
 Francis Newport, Earl of **Bradford**.  
 John Culpeper, Lord **Culpeper**.

## CVII.

MARCH 6, 1696.

By the Act 7, 8 William III, chapter 10, entitled, ‘An Act for continuing several duties granted by former Acts upon wine and vinegar, and upon tobacco and East India goods, and other merchandise imported for carrying on the war against France,’ provision, § 18, is made that ‘guineas, half-guineas, double-guineas, and five-pound pieces’ shall not exchange for more than twenty-six shillings to the guinea, but that on the other hand, no one shall be compelled to receive guineas at the rate of twenty-six shillings.

On this the following protest is entered.

I dissent to the said Bill, by reason of a clause therein concerning the price of guineas, which, I conceive, is prejudicial to the privileges of this House, and the trade of the country.

James Bertie, Earl of **Abingdon**.

## CVIII.

APRIL 7, 1696.

A Bill was brought from the House of Commons, entitled, ‘An Act for restraining the wearing of all wrought silks, Bengals, and dyed printed stained calicoes imported into the Realm of England of the product and manufacture of Persia and the East Indies.’ The Bill was petitioned against by the linen-drapers, and counsel was heard against it on the 4th of April, when it was ordered that it should be put into a committee of the whole House on Tuesday, the 7th of April, when all who would might petition by counsel against it. The Bill dropped for the session. The following protest is on a point of order.

1st, Because it was never known, that where a Bill was once referred to a committee of the whole House, the House did hear counsel and examine witnesses to any part of the Bill so committed, or when that committee was still subsisting.

2ndly, Because, we conceive, such proceedings may occasion

severe reflections upon the honour of this House, and may be of fatal consequence, by inverting the laws and customs of Parliament, upon which our constitution depends.

Charles Paulet, Duke of Bolton.  
Thomas Grey, Earl of Stamford.

## CIX.

DECEMBER 23, 1696.

The plot of Charnock, Porter, Goodman, and Parkyns, to which Sir John Fenwick was privy, and which is supposed to have been known and encouraged by James, contemplated the assassination of William, was discovered on the 15th of February by Prendergass, Fishers, and De la Rue, and was communicated to Parliament by William on the 24th of February. An Act was passed at once to secure the King's person, and 'a form of association' was drawn up by both Lords and Commons, to which all but 15 of the former and 92 of the latter attached their signatures. The trials of the principal conspirators were held early in the year 1696. Fenwick escaped and lay in hiding. In order to secure himself he tried to induce Porter, one of the two witnesses who could prove his complicity in the plot, to leave England, and failed. Fenwick was captured, and made confession, implicating several eminent persons in England, high in William's confidence. Meanwhile his wife Lady Mary Fenwick, sister to Lord Carlisle, had contrived to induce the other witness, Goodman, to decamp. On this it was resolved to bring in a Bill of Attainder against Fenwick. On the day when the Bill was read a third time by 68 to 61 in the Lords, the following protest was entered.

Leave being asked and given for any Lord to dissent, if the question was carried in the affirmative, we, whose names are underwritten, do dissent, for the reasons following :

Because bills of attainder against persons in prison, and who are therefore liable to be tried by law, are of dangerous consequence to the lives of the subjects, and, as we conceive, may tend to the subversion of the laws of this Kingdom.

Because the evidence of grand jurymen, of what was sworn before them against Sir John Fenwick, as also the evidence of the petty jurymen, of what was sworn at the trial of other men, were admitted here; both which are against the rules of law, besides that they disagreed in their testimony.

Because the information of Goodman in writing was received, which is not by law to be admitted ; and the prisoner, for want of

his appearing face to face, as is required by law, could not have the advantage of cross-examining him.

And it did not appear by any evidence that Sir John Fenwick, or any other person employed by him, had any way persuaded Goodman to withdraw himself; and it would be of very dangerous consequence, that any person so accused should be condemned; for by this means a witness, who shall be found insufficient to convict a man shall have more power to hurt him by his absence, than he could have if he were produced *viva voce* against him.

And if Goodman had appeared against him, yet he was so infamous in the whole course of his life, and particularly for the most horrid blasphemy which was proved against him, that no evidence for him could or ought to have any credit, especially in the case of blood.

So that in this case, there was but one witness, viz. Porter, and he, as we conceive, a very doubtful one.

Lastly, Because Sir John Fenwick is so inconsiderable a man, as to the endangering the peace of the Government, that there was no necessity of proceeding against him in this extraordinary manner.

William Savile, Marquis of Halifax.  
John Digby, Earl of Bristol.  
George Fitzroy, Duke of Northumberland.  
Theophilus Hastings, Earl of Huntingdon.  
John Sheffield, Marquis of Normanby.  
George Compton, Earl of Northampton.  
Thomas Tufton, Earl of Thanet.  
Daniel Finch, Earl of Nottingham.  
Thomas Osborne, Duke of Leeds.  
Robert Bertie, Earl of Lindsey.  
Robert Leke, Earl of Scarsdale.  
Charles Dormer, Earl of Carnarvon.  
Nicholas Crewe, Bishop of Durham.  
Thomas Thynne, Viscount Weymouth.  
James Bertie, Earl of Abingdon.  
Anthony Grey, Earl of Kent.  
Peter Mews, Bishop of Winchester.  
John Granville, Earl of Bath.  
Laurence Hyde, Earl of Rochester.  
Thomas Watson, Bishop of St. David's.  
John Arundell, Lord Arundell of Trerice.  
Henry Compton, Bishop of London.  
Robert Shirley, Lord Ferrers of Chartley.

Richard Kidder, Bishop of Bath and Wells.  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 William Legge, Lord Dartmouth.  
 Thomas Sprat, Bishop of Rochester.  
 Robert Carey, Lord Hunsdon.  
 Richard Verney, Lord Willoughby de Broke.  
 Gilbert Ironside, Bishop of Hereford.  
 Charles Howard, Earl of Carlisle.  
 William Craven, Earl Craven.  
 Charles Granville, Lord Granville.  
 Edward Devereux, Viscount Hereford.  
 William Fermor, Lord Lempster.  
 John Jeffreys, Lord Jeffreys.  
 James Brydges, Lord Chandos.  
 Thomas Lennard, Earl of Sussex.  
 Thomas Leigh, Lord Leigh.  
 Hugh Willoughby, Lord Willoughby of Parham.  
 Charles Mildmay, Lord Fitzwalter.

## CX.

JANUARY 23, 1697.

A Bill for regulating elections was introduced in the Lords from the Commons, purposed to create certain qualifications for a seat in the House, and in order to conciliate the mercantile classes, contained a clause that any merchant, being a natural born subject of England, who was worth £5000 in real and personal estate, might be elected, provided this estate did not consist of a deposit in a bank, or any other company. According to Ralph, the object of the Bill was to exclude the crowd of court candidates who were or might be bribed, and to confer the right of a seat on country gentlemen and the rich merchants, because they were less likely to be corrupted. According to Macaulay, chapter xxii, it was opposed by the wealthiest of the aristocracy, the lawyers, and the merchants. It passed the Commons, but was lost in the Lords on the second reading by 62 to 37. The Commons afterwards purposed to tack it to a money bill (the Land Tax), but Foley the Speaker dissuaded them.

The following protest is entered against the rejection of the Bill.

Because this Bill did provide, that none but natural born subjects of England, and men of estates, should be capable of being chosen to serve in Parliament, which we conceive most agreeable to the constitution and true interest of this Kingdom.

Edward Montagu, Earl of Sandwich.  
 William Savile, Marquis of Halifax.  
 John Sheffield, Marquis of Normanby.  
 Daniel Finch, Earl of Nottingham.

Thomas Tufton, Earl of Thanet.  
 Charles Granville, Lord Granville.  
 Thomas Sprat, Bishop of Rochester.  
 Thomas Watson, Bishop of St. David's.  
 John Granville, Earl of Bath.  
 Lewis de Duras, Earl of Feversham.  
 Thomas Thynne, Viscount Weymouth.  
 John Jeffreys, Lord Jeffreys.  
 William Legge, Lord Dartmouth.  
 Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.

## CXI.

APRIL 15, 1697.

A Bill was introduced into the Lords from the Commons (8, 9, William III, chapter 32), entitled, 'an Act to restrain the number and ill practice of brokers and stock jobbers.' In a committee of the Lords, a proposal was made to omit certain words in the eleventh section of the Act, which provided that certain bargains and agreements made and entered into, or to be made, &c., under certain circumstances should be void. The Lords decline to adopt the omission of the words 'made and entered into, or,' and the following protest is inserted.

Because this clause without this amendment hath a retrospect.

John Sheffield, Marquis of Normanby.  
 Charles Seymour, Duke of Somerset.  
 Charles Granville, Lord Granville.  
 Thomas Jermyn, Lord Jermyn.  
 John Granville, Earl of Bath.  
 Laurence Hyde, Earl of Rochester.  
 Francis Newport, Earl of Bradford.  
 John Churchill, Earl of Marlborough.  
 Hugh Clifford, Lord Clifford of Chudleigh.

## CXII.

MARCH 8, 1698.

A Bill to 'dissolve the marriage between the Earl of Macclesfield (Charles Gerard) and his wife Anne, and to illegitimate the children of the said Anne' was introduced into the House of Lords on the 15th of January. After the usual course had been adopted, the Bill was read a third time and passed. It received the royal assent on the 2nd of April. Luttrell in his diary for the 3rd of March, says, 'It is said the son she had during her elopement goes by the name of Savage, and supposed father the present Earl of Rivers (Richard Savage).' In the divorce Bill, a clause was added by the judges giving Lady Macclesfield and her heirs £750

per annum, £500 at once, and £250 after her mother's decease. She afterwards married a Mr. Brett. Lord Macclesfield afterwards married a Miss Harbord, was sent to congratulate the House of Hanover on the Act of Settlement, and died on the 5th of November, 1701. He was succeeded by his brother Fitton Gerard, who died on the 24th of December, 1702, when the title became extinct.

The following protest was entered against the passing of the Bill.

Because, we conceive, this is the first Bill of this nature that hath passed, where there was not a divorce first obtained in the spiritual court, which we look upon as an ill precedent, and may be of dangerous consequence in the future.

William Savile, Marquis of Halifax.  
Laurence Hyde, Earl of Rochester.

### CXIII.

JUNE 15, 1698.

The articles of impeachment exhibited against Goudet and others in the House of Lords are to be found in the Lords Journals of the 18th of May. These articles charge them, being French merchants resident in London, with trading and corresponding with France during the late war. They were convicted, and fined in sums varying from £10,000 to £1000, and were to be imprisoned in Newgate till the money was paid; while John Pearce, an Englishman who had associated himself with them was fined £1000, and sentenced to be imprisoned for a year after the fine was paid. The Lords addressed the King to grant the fines, in all £19,500, to the benefit of Greenwich Hospital, to which the King agreed. The several parties 'confessed themselves guilty,' though they pleaded not guilty.

The subjoined protest refers to the form of procedure. The Commons claimed a right to seats to be provided for them, in cases of impeachment. The Lords, after searching for precedents, asserted that the House of Commons 'have always come to the Bar of the House without any other provision for them, and their Lordships intend to proceed in the same manner as hath been usual at all trials within their House.' The Commons desire a conference, which is granted, but the Lords insist on their resolution.

1st, Because the managers of the House of Commons may have occasion, in trials upon impeachment, to have recourse to papers, books, and records, which they cannot so conveniently make use of in a crowd.

2ndly, It seems as reasonable, that some provision should be made for their convenience, and to protect them from the crowd at the Bar of this House, as in Westminster Hall, 'the judicature of this

House receiving no alteration by the place to which they adjourn ; nor could the Lords think so, when even upon the desire of the Commons themselves in the Earl of Stafford's case, being offered all imaginable convenience at the Bar of this House, and finding themselves straightened thereby, the Lords appointed the trial to be in Westminster Hall, on that consideration, as we conceive.

3rdly, The noblest part of their Lordships' judicature may not only hereby be lost, but what has been hitherto thought one of the greatest securities against attempts upon the constitution, by such a discouragement of the Commons from bringing up impeachments to the Bar of this House, will be very much weakened.

William Cavendish, Duke of Devonshire.

Thomas Grey, Earl of Stamford.

John Thompson, Lord Haversham.

The protest seems to have given offence, for by order of the 16th of June, a summons of the House was made for the 17th, in order to consider the reasons, but no further entry is made in the Journals.

#### CXIV.

JULY 1, 1698.

The circumstances attending Montague's scheme for annulling the monopoly of the old East India Company are stated by Macaulay, chap. xxiii. The Bill was carried by 65 to 48, and the following protest was entered.

1st, Because this Bill puts an unreasonable hardship upon the present East India Company, since it plainly appeared at the Bar of this House, that a security, of which (we conceive) there was no reason to doubt, had been offered by the said company for raising the whole two millions for the public service, whereas the Bill investing the new subscribers with the trade upon the subscription of one million only, does not, as we conceive, give so much as a probability of raising more ; and it may be reasonably enough doubted, whether the separate trade allowed in this Bill, concurrent with a joint-stock, may not prove so inconsistent, as to discourage the subscription from ever coming near to the said million.

2ndly, Because the Bill puts a period to the charter of the East India Company, and gives the whole trade thither to other persons, without so much as suggesting that the said charter, or the trade carried on by virtue of it, hath been prejudicial to the King or

Kingdom, though the said Company have an express clause in their charter, that it shall not be determined without three years' warning, even if it should appear not profitable to the King or this Realm; and the Bill granting likewise a supply of two millions, in which the Commons pretended the House of Lords ought not to make any alteration; we are of opinion, their Lordships are thereby likewise deprived of the freedom of their vote in the matter of the East India trade, to which it cannot be denied but they have an equal right with the Commons, and yet by its being joined to a Bill of Supply, this House must either be the occasion of disappointing so large and necessary a grant for the public service, or be put upon the unreasonable hardship of consenting to a matter which, though it seems never so unjust, it is fruitless for them to examine, if their amendments are not to be admitted, because offered to a money-bill; which we humbly conceive to be a manifest violation of the rights of this House, and tending to an alteration of the constitution of the Government.

William Savile, Marquis of Halifax.  
 Robert Leke, Earl of Scarsdale.  
 Laurence Hyde, Earl of Rochester.  
 James Touchet, Lord Audley (Earl of Castlehaven).  
 James Annesley, Earl of Anglesey.  
 Arthur Herbert, Earl of Torrington.  
 Henry Compton, Bishop of London.  
 Hugh Willoughby, Lord Willoughby of Parham.  
 Charles Granville, Lord Granville.  
 Thomas Sprat, Bishop of Rochester.  
 Charles Berkeley, Lord Berkeley of Berkeley.  
 Charles Howard, Lord Howard of Escrick.  
 Basil Feilding, Earl of Denbigh.  
 Charles Mordaunt, Earl of Peterborough (Earl of Monmouth).  
 George Berkeley, Earl of Berkeley.  
 Sidney Godolphin, Lord Godolphin.  
 John Jeffreys, Lord Jeffreys.  
 Francis North, Lord Guilford.  
 Edward Fowler, Bishop of Gloucester.  
 Peter Mews, Bishop of Winchester.  
 William Legge, Lord Dartmouth.

## CXV.

APRIL 27, 1699.

In the Act 11 William III, cap. 9, which is a Bill of Supply 'for £1,484,015 1s. 11*1/4*d. for disbanding the army, and providing for the navy,

and for other necessary occasions,' a clause is annexed at the conclusion of the Bill, whereby Commissioners are appointed to take an account of the grants of Irish forfeitures for six months from the 10th of May, 1699, these Commissioners having large and special powers. The Commissioners were Henry, Earl of Drogheda, Francis Annesley, John Trenchard, James Hamilton, and Henry Langford, Esqs., Sir Richard Levinge and Sir Francis Brewster. The circumstances are commented on by Macaulay, chap. xxv. The greater part of the forfeitures were bestowed on the families of Bentinck and Keppel.

The following protest refers to the constitutional question involved in the tack.

Because of the clause at the latter end of the Bill, which constitutes Commissioners for enquiring into, and taking an account of all such estates real and personal, within the kingdom of Ireland, as have been forfeited for high-treason by any persons whatsoever during the late rebellion within that kingdom; which, we conceive, was a matter foreign to this Bill, and more proper for a Bill by itself, and that the tacking of a clause of that nature is contrary to the ancient method of proceedings in Parliament, and on that account, as we apprehend, may be of very ill consequence to the freedom of debate in either House, and highly prejudicial to the privileges of the Peers, and the prerogative of the Crown.

Henry Howard, Earl of Suffolk.  
 James Annesley, Earl of Anglesey.  
 Laurence Hyde, Earl of Rochester.  
 Thomas Wentworth, Lord Raby.  
 John Jeffreys, Lord Jeffreys.  
 George Booth, Earl of Warrington.  
 Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.  
 John Hough, Bishop of Oxford.  
 John Thompson, Lord Haversham.

## CXVI.

JANUARY 23, 1700.

A writ of error from a judgment of the Exchequer Chamber, made in Michaelmas Term, 1696, and which reversed a judgment given in Hilary Term, 1691, in favour of one Robert Williamson against the Attorney General, was brought in the House of Lords on the 4th of April, 1699. Parliament was prorogued on the 4th of May, and the matter was not debated till the reassembling of the House. After long debate, the judgment of the Exchequer Chamber was reversed. Technically, the suit was an action on the part of one Robert Williamson against the Attorney-General for the payment of an annual sum of £60, and the arrears thereof

out of the hereditary excise. Practically it appears from Luttrell (Journal of the 23rd of January, 1700), that it was a decision of the Lords affirming the liability of the crown to the banker's debt, contracted when the Cabal Ministry shut up the Exchequer in 1672. Unfortunately there are no reports of cases in the Exchequer and Exchequer Chamber for a considerable part of the time between a few years after the Restoration, and the commencement of Anne's reign. The objections to the reversal appear to be technical. The Court of Augmentations was established after the dissolution of the monasteries, 27 Henry VIII, in order to hear and determine controversies arising out of abbey lands.

The following protest is entered.

These Lords, whose names are hereunto subscribed, do dissent, for the reasons following:

For that, we conceive, it did not appear, that ever any such judgment was given by the Exchequer before the annexing the Court of Augmentations to the Exchequer.

For that since the dissolving and annexing of the said Court of Augmentations, there hath no such judgment been given, unless in such cases, which were in the cognizance of the Court of Augmentations before it was dissolved.

That the judgments in the case of Sir Henry Neville and Sir Thomas Wroth, and others of the like nature cited, seem to be by virtue of the powers of the Court of Augmentations being annexed to the Court of Exchequer.

That those courts were duly annexed, appears by the preamble of the statute 1 Eliz. cap. 4, by the Lord Chief Justice Bromley's case, and by the case of the Earl of Devonshire in Coke's Reports, and for that the Court of First-fruits and Tents was dissolved and annexed in like manner to the Exchequer, as the Court of Augmentations was; which powers, by that annexation, subsist in that Court to this day.

John Lowther, Viscount Lonsdale (Lord Privy Seal).

Thomas Grey, Earl of Stamford.

Richard Savage, Earl Rivers.

John Culpeper, Lord Culpeper.

George Neville, Lord Abergavenny.

John Thompson, Lord Haversham.

William Lloyd, Bishop of Worcester.

Gilbert Burnet, Bishop of Salisbury.

Symon Patrick, Bishop of Ely.

Richard Cumberland, Bishop of Peterborough.

## CXVII.

FEBRUARY 8, 1700.

The history of the Darien plantation, its unanimous adoption by the Scotch Legislature in 1695, after it had been projected by Paterson, and accepted by Lord Tweeddale, the Scotch High Commissioner, the hopes it excited, the total failure of the project, and the indignation with which the Scotch ascribed the failure to the malignity of the English Parliament are well known. The expedition set out in 1698 and was ruined before a year was over.

On the 8th of February the following resolution was offered to the House and approved, 'That the settlement of the Scotch colony at Darien is inconsistent with the good of the Plantation Trade of this Kingdom.' Nine Peers dissent without reasons. But the following protest is inserted and signed.

Because, as we conceive, there has not been made appear, in this debate, any ground sufficient to determine a point of so great importance, and yet it has been refused to allow time for due information in a matter of trade, which is very obscure, and of the highest consequence to the quiet and welfare of both nations in this conjecture.

John Sheffield, Marquis of Normanby.  
Daniel Finch, Earl of Nottingham.  
Thomas Thynne, Viscount Weymouth.  
Henry Compton, Bishop of London.  
Henry Yelverton, Viscount Longueville.  
William Legge, Lord Dartmouth.

## CXVIII.

MARCH 8, 1700.

The Duke of Norfolk had twice petitioned the House for an Act to enable him to obtain a divorce from his wife, Lady Mary Mordaunt, and had been unsuccessful in 1692 and 1693. In the early part of 1700 he again petitioned the Lords, alleging that he had clear proof of adultery with Sir John Germain. The following protest is entered on the second reading; carried by 47 to 30. The Bill passed and received the royal assent on the 11th of April. The judgment of the Lords was made the subject of a pamphlet, entitled 'A Letter to a Friend concerning the Duke of Norfolk's Bill,' which the Lords on the 25th of March voted to be a scandalous libel, and for the writer of which they ordered the Stationers' Company to make search. The search seems to have been unsuccessful.

1st, Because, we conceive, there was a contradiction in the evidence given at the Bar, which made the validity of it suspected.

2ndly, And because it is without precedent, that a Bill of this nature was ever brought into Parliament, where the subject-matter had not been first proceeded on in the Ecclesiastical Courts; and that it may be of dangerous consequence to the settlements of families, to subject the dissolution of marriages to so short and summary a way of proceeding.

William Savile, Marquis of Halifax.  
 Charles Paulet, Duke of Bolton.  
 Laurence Hyde, Earl of Rochester.  
 Charles Boyle, Earl of Burlington.  
 Thomas Tufton, Earl of Thanet.  
 John Vaughan, Lord Vaughan (Earl of Carbery).  
 Henry Compton, Bishop of London.  
 Thomas Thynne, Viscount Weymouth.  
 Robert Leke, Earl of Scarsdale.  
 John Jeffreys, Lord Jeffreys.  
 William North, Lord North and Grey.  
 Thomas Sprat, Bishop of Rochester.  
 Ralph Montague, Earl of Montague.  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 William Fermor, Lord Lempster.  
 Thomas Lennard, Earl of Sussex.  
 Nicholas Strafford, Bishop of Chester.  
 James Gardner, Bishop of Lincoln.  
 Symon Patrick, Bishop of Ely.

## CXIX.

APRIL 4, 1700.

An Act was brought from the House of Commons for granting an aid to his Majesty, by the sale of forfeited and other estates and interests in Ireland, and by a Land Tax in England. It appears in the Statute Book as 11, 12 William III, cap. 11. It provides that all Irish estates forfeited since the 13th of February, 1689, or of those who died in actual rebellion since that date, all of which James II was seized at his accession, and all judgments, securities, debts, goods, and chattels of persons so convicted or attainted, shall be vested in trustees appointed for putting the Act into execution, to be sold or disposed of for the purposes of the Act, and that all grants made since the above date, under the Great Seal of England and Ireland, or Seal of Exchequer, or Act of Irish Parliament to be null and void. The Commissioners appointed to enquire under 10 William III are to receive sums, £1,000 apiece, except Levinz and Brewster (who had

dissented from Trenchard's report) who are to receive £500. These and other provisoies are prefixed to a Land Tax and are therefore a Tack. The trustees were Sir Cyril Wych, Annesley, Hamilton, Baggs, Trenchard, Isham, Langford, Hooper, Cary, Sir Henry Sheres, Harrison, Fellows, and Rawlins and are to be paid £1,500 a year each. The report made to the House of Commons on the forfeited estates is to be found in Bodley Pamphlets, 233. The grant to Lord Woodstock, Portland's son, is said to be 135,820 acres, that to Albemarle 108,633 acres.

The following protest is entered.

Though there be nothing we more earnestly desire, and shall on all occasions, to the utmost of our power, more sincerely and heartily endeavour, than the preservation of a constant right and good understanding and agreement between the two Houses of Parliament, as that on which the safety, welfare, and happiness of the nation, and the preservation of the wisest and noblest constitution in the world, does so much depend; yet we cannot but enter this our protestation against a second reading of this Bill.

1st, Because, as we conceive, this Bill does, in one part, tend very much to the alteration (if not to the destruction) of that constitution which, we believe, the supply in the other part was given to preserve.

2ndly, Because, we conceive, the tacking so many and different matters to a money bill is not only contrary to all the rules and methods of Parliament, but highly dangerous both to the undoubted prerogative of the Crown, and right of this House, putting it, as we conceive, in the power of the Commons to make any resolutions of their own as necessary, as any supply given for the support or emergencies of state.

3rdly, We know not how far the just right any private subject has to his estate may be endangered by the precedent of such a Bill; for if the titles so many persons have to their estates may be determined by the Commons in a money bill without either oath or appeal, as, we conceive, in this Bill they are, we cannot apprehend, how any single private subject, or Minister of State, can, for the future, be safe; which must needs be a weakening the prince's hands, and the legal security every man now has to his estate.

Charles Lennox, Duke of Richmond.

Charles Paulet, Duke of Bolton.

Thomas Grey, Earl of Stamford.

James Annesley, Earl of Anglesey.

Charles Mohun, Lord Mohun.

George Neville, Lord Abergavenny.  
 James Touchet, Lord Audley (Earl of Castlehaven).  
 John Thompson, Lord Haversham.

## CXX.

APRIL 10, 1700.

The Lords insisted on the reasons given at their conference with the Commons on the 9th of April. At this conference the Commons (on the ground that all Bills of Supply are the sole right of Commons, and therefore it is their right 'to direct, limit, and appoint in all such Bills the ends, purposes, considerations, limitations, and qualifications of such grants, which ought not to be changed or altered by their lordships,') refuse to give reasons, lest they should weaken their rights, and leave the Bill in the Lords' hands, 'together with the ill consequences that may attend the not passing the Bill.' On the next day the Lords insist on their amendments. A free conference follows, and the Lords give way by 43 to 43, the question whether to adhere to the amendments being lost, and that of agreement being carried by 39 to 34.

The following protest, being the reasons alleged at the conference on behalf of the Lords is inserted.

We do dissent for the reasons given this day to the Commons at a conference, which reasons are as follows :

1st, Because the reasons given by the Commons against their Lordships amendments do no ways relate to the matter contained in the said amendments.

2ndly, Because though there be nothing in the said amendments relating to aids and supplies granted to his Majesty in Parliament, yet the Commons have thought fit to take occasion thereupon to assert a claim to their sole and entire right, not only the granting all aids in Parliament, but that such aids are to be raised by such methods, and with such provisions as the Commons only think proper : if the said assertions were exactly true (which their Lordships cannot allow) yet it could not, with good reason, follow from thence, that the Lords may not alter, or leave out, according to their amendments, when the saving estates of innocent persons, and of such as have been outlawed after their death, makes such amendments necessary.

3rdly, And the Lords think it unreasonable and unjust to vest in the trustees any greater, or other estate, than was in the forfeiting person, or than the King may legally have ; since thereby not only

many innocent persons, who come in by descent or purchase, or other valuable considerations, might suffer equally as criminals, but it is possible, that men, who, with the utmost hazard of their lives, have been defending the Government, may forfeit as traitors: and they cannot apprehend, that by any law of this land, or by any rule of reason or justice, any person ought to be outlawed after his death, since it is condemning a man unheard, and allowing him no opportunity of making his innocence appear.

4thly, The Lords admit the resumption of the forfeited estates in Ireland to be a thing necessary, by reason of the great debt due to the army and others, which they earnestly desire to see discharged, and are therefore very willing and desirous to give their consents to any reasonable Bill the Commons shall send them up to that purpose: but the Lords can by no means consent, that the Commons shall take upon them to dispose of any of the said forfeitures to any private persons, it being the sole and undoubted right of the Crown to be the distributor of all bounties, and being contrary to all the laws and course of Parliaments, to give aids, supplies, or grants, to any but the King only; and as the contrary practice is totally new and unprecedented, so, in process of time, it may become of the last ill consequence to the public.

5thly, The Lords cannot agree to the clauses that create an incapacity in the Commissioners or managers of the Excise for sitting in this Parliament, because the qualification of members to serve in Parliament is a thing (if proper to be meddled with at all) that hath been thought fit by the Commons to be in a Bill, by itself; and the joining together, in a money bill, things so totally foreign to the methods of raising money, and to the quantity or qualification of the sums to be raised, is wholly destructive of the freedom of debates, dangerous to the privileges of the Lords, and to the prerogative of the Crown: for by this means things of the last ill consequence to the nation may be brought into money bills, and yet neither the Lords, nor the Crown, be able to give their negative to them, without hazarding the public peace and security: and it seems a great hardship to the counties and places, who chose such members, to deprive them of their services, since they knew them to be Commissioners of Excise at the time they chose them, and since the Commons admit them to be proper persons to serve either in Excise or Parliament, though not at the same time; so that there

seems to be no other reason of distinguishing these Commissioners but what is common to all other officers of the Crown; and the question, 'whether such an alteration may be convenient,' must needs be a doubt with the Lords, since the Commons have not been able this very Session to satisfy themselves with the Bill, and the considerations they have entertained upon that subject.

The Lords do seriously consider the dangers and inconveniences that are likely to happen by the loss of this Bill, and by the difference betwixt the two Houses, and are heartily sorry for them, and desirous to avoid them by all the means they can; as does manifestly appear by having complied and over-looked the irregularities of Bills of the like nature, and, at the same time, by entering in their books, to be seen by everybody, their just sense of the wrong, and their resolutions of asserting that fundamental right, of the exercise of which there are many precedents extant in their books: but since they find that such their kind intentions of maintaining a good correspondence with the Commons has had no other effect but to introduce greater impositions upon them, and such as will certainly prove destructive to the ancient and excellent constitution of our Government, since the Lords have no objection to the resumption, nor no design to invade the least right of the Commons, but only to defend their own, that they may transmit the Government and their own rights and privileges to their posterity, in the same state and condition that they were derived down to them from their ancestors; they think themselves wholly discharged from being in the least accessory to any such dangers or inconveniences, and conceive they are sufficiently justified before God and man, notwithstanding such innovations and invasions upon our constitution and our laws as must necessarily prove the destruction of them.

Henry Howard, Duke of Norfolk (Earl Marshal).

Robert Shirley, Lord Ferrers of Chartley.

Thomas Herbert, Earl of Pembroke.

Charles Lennox, Duke of Richmond.

John Lowther, Viscount Lonsdale (Lord Privy Seal).

John Egerton, Earl of Bridgwater.

Thomas Wentworth, Lord Raby.

Thomas Grey, Earl of Stamford.

Charles Paulet, Duke of Bolton.

George Neville, Lord Abergavenny.

Charles Mohun, Lord Mohun.

James Annesley, Earl of Anglesey.

William North, Lord North and Grey.  
 John Culpeper, Lord Culpeper.  
 Henry Herbert, Lord Herbert of Chirbury.  
 James Touchet, Lord Audley (Earl of Castlehaven).  
 Edward Montagu, Earl of Sandwich.  
 Nathaniel Fiennes, Viscount Say and Sele.  
 John Thompson, Lord Haversham.  
 Charles Fitzroy, Duke of Southampton.  
 Charles Howard, Lord Howard of Escrick.

## CXXI.

MARCH 3, 1701.

On the 25th of February, 1701, the Countess of Anglesey (Catharine Darnley, daughter of James II, by Catharine Sedley, the daughter of Sir Charles Sedley) petitioned the Lords for leave to bring in a Bill of separation from her husband on the plea of his cruelty. On the 27th of February, Lord Rochester, Lord Ferrers, Lord Haversham, and Lord Somers are deputed to advise Lady Anglesey to return to her husband, who pledges himself ‘on her submission and good behaviour to treat her with kindness, and that in all cases she shall be safe from any violence.’ The mission was unsuccessful, and leave was given to bring in a Bill. The Countess said she thought her life in danger if she returned. The Bill passed and received the royal assent on the 12th of June. Lord Haversham was connected with the Earl of Anglesey, for one of his daughters was married to Lord Anglesey’s brother.

1st, The leave for this Bill is founded upon the supposition of an utter impossibility of a reconciliation between my Lord Anglesey and the Countess; which supposition (with submission) seeming to me very precarious, though it may be the consequence of such a Bill, cannot, to me, be the reason for it.

2ndly, Marriage being looked upon in the Church of Rome as a sacrament always and in all cases indissoluble, but by the pretended authority of the infallible vicar; and there being, in some cases, an absolute necessity for a divorce, the Roman courts of judicature, fearing to expose the weakness of the infallibility, contrived this trick of a separate maintenance; which practice of theirs, I humbly conceive, such a Bill would give too much countenance to.

3rdly, A perpetual separate maintenance, as seems intended by such a Bill, is a much heavier judgment upon the Earl of Anglesey than divorce itself, it having all the nature of a punishment to my Lord Anglesey, and nothing of ease; and is directly contrary to

the very appointment and design of marriage, posterity and society being destroyed, and the public injured thereby.

4thly, No judgment in this matter (as I humbly conceive) ought to be made, or when made can be valid, but what is expressly allowed of by the evangelic law, which law, to me, seems nowhere to permit of such a perpetual separation, without an absolute divorce.

5thly, Though it cannot be doubted, but in the course of so many ages, as great domestic differences have happened between men and their wives as in the present case, yet no precedent has as yet been produced, as I know of, of any Bill of the like nature.

John Thompson, Lord Haversham.

## CXXII.

MARCH 8, 1701.

In February, 1697, Commodore Norris was appointed commander of the fleet designed for recovering Newfoundland, and which consisted of eight men of war, two fireships, and two 'bomb-vessels,' and was joined in commission by Colonel Gibson, who was to command the land forces. Before he reached the place, the French had abandoned it. Norris took several prizes. On the 7th of March, 1698, Captain Desborough petitioned the Lords against Norris for not intercepting Ponti, the commander of the French squadron, which sailed from Brest, cruised in the West Indies, and sacked Cartagena. On the 25th of March, 1699, the Lords resolved that Norris had mismanaged the business, and dishonoured the King and Kingdom. They addressed the King to this effect, and on the return of Norris in July, he was removed from his command. By the present vote he was restored. In 1706 Norris was made an admiral, and knighted. He died in 1749.

The following protest is entered on the resolution to address the King, to take off his suspension.

Dissident,

For that Captain Norris having been accused by many witnesses, upon oath, of great neglect of his duty, in not attacking Monsieur Ponty's ships in Conception Bay, notwithstanding the intelligence given of them to him by Captain Desborow, Cumberbatch, and several prisoners, and of pestering his ship with prize-goods, which he had embezzled; and thereupon this House having made an address to his Majesty, to order Captain Norris to attend this House, to answer such matters as had been objected against him,

and that in the mean time he should be suspended from his employment, which his Majesty has been pleased to order; and accordingly Captain Norris having appeared before us, but the matters not having been fully examined by hearing at this time the witnesses either against him, or for him, we conceive it very improper to make any such address in his favour, he being, for all that yet appears to us, guilty of the matters charged upon him; and we are the more convinced of this, because the motion made of remitting Captain Norris to a trial, by a council of war, was not accepted; and besides the unreasonableness of passing any sentence of acquitting a man accused, upon oath, without a full hearing of the cause, we think it also of very dangerous consequence, that, in this conjuncture especially, a man should be capable of being employed in so important a station as in the fleet, who lies under the heavy charge of embezzling prizes, and pestering his ship with them, and of failing to attempt a service which would have been of vast advantage to us, and prejudice to our enemies.

Thomas Osborne, Duke of Leeds.  
 Hugh Willoughby, Lord Willoughby of Parham.  
 John Sheffield, Marquis of Normanby.  
 Daniel Finch, Earl of Nottingham.  
 Charles Howard, Lord Howard of Escrick.  
 Arthur Herbert, Earl of Torrington.  
 John Jeffreys, Lord Jeffreys.  
 Aubrey de Vere, Earl of Oxford.  
 Thomas Tufton, Earl of Thanet.  
 Thomas Thynne, Viscount Weymouth.  
 John Granville, Lord Granville.  
 John Poulett, Lord Poulett.

## CXXIII.

MARCH 15, 1701.

The death of the King of Spain and the accession of the Duke of Anjou (Philip V) led, as is well known, to the War of the Spanish Succession. The protests which follow were drawn up in relation to the particulars which became known to the Lords in connexion with the Partition Treaty, and are related to the proceedings which were taken against Lord Somers, the Earls of Portland and Orford, and Lord Halifax. The articles exhibited against Lord Orford are to be found in the Lords' Journal for the 9th of May; those against Lord Somers for that of the 19th of May; those against Halifax for that of the 14th of

June. Somers and Orford were acquitted; the former by 56 to 32, the latter unanimously. The charges against Lord Haversham, the Earl of Portland, Lord Halifax, and the Duke of Leeds were dismissed.—State Trials, vol. v. p. 339.

The first protest is on a clause in the heads of a report on ‘the facts of the Treaty now in debate’ brought up by Lord Nottingham. The second of the heads was ‘That the Emperor of (Germany) was not a party to this treaty though principally concerned.’ This clause was negatived by the House by 40 to 24, and the following protest inserted.

1st, Because it is manifest by the treaty itself, that the matter of fact is true.

2ndly, Because the Emperor, as we conceive, had been the most proper to have treated with on this occasion, for it was more prudent and safe to have treated with the Emperor to have restrained the pretensions of France, than with France to lessen the dominions of the House of Austria, which in its full strength, and in conjunction with the most considerable powers in Europe, and with the expense of more than sixty millions sterling to our share, was scarce able to withstand the arms of France.

3rdly, But admitting that the Emperor was not the most proper to be treated with, yet to prevent the umbrage that might be taken by uniting too many dominions under one Prince, especially such a Prince as, without any additions, was formidable to all Europe, yet of all others, the Emperor was the most improper to be left out of such a treaty, for he was most concerned in it; and our ministers could not, or at least did not, sufficiently support his interests, or the just balance of Europe; but, on the contrary, as we are informed by one Lord who signed the treaty, it was concluded against the express desire of the Emperor.

Thomas Osborne, Duke of Leeds.

John Sheffield, Marquis of Normanby.

Henry Yelverton, Viscount de Longueville.

Daniel Finch, Earl of Nottingham.

John Granville, Lord Granville.

Thomas Tufton, Earl of Thanet.

Montague Bertie, Earl of Abingdon.

Price Devereux, Viscount Hereford.

Charles Howard, Lord Howard of Escrick.

John Jeffreys, Lord Jeffreys.

Thomas Thynne, Viscount Weymouth.

Robert Leke, Earl of Scarsdale.

Francis North, Lord Guilford.

John Poulett, Lord Poulett.

William Craven, Lord Craven.  
Thomas Sprat, Bishop of Rochester.

## CXXIV.

MARCH 15, 1701.

The third clause of the report was ‘that no minister of the States General met with the plenipotentiaries of England and France, as were required by the powers at the making the treaty in London.’ This clause was negatived, and the following protest entered.

1st, Because the truth of this proposition is reason enough for asserting it, and it must certainly be of fatal consequence, if ministers, without any directions by instructions in writing, shall presume to act contrary to the very commission that empowers them; and, in this case, the assistance of the Dutch ministers was the more necessary, because the Emperor was no party to this treaty, and the States General are more immediately concerned, than we are, to promote his interests.

2ndly, But if this treaty was concerted with the Dutch ministers in one thousand six hundred and ninety-nine, before his Majesty’s return into England, as was asserted by one of the Lords who signed it afterwards in London, then,

1. This treaty was made by those who had no authority to transact it, for the power was not granted by his Majesty till the 2nd of January following.

2. As they acted without power, so without instructions too in writing, which never was practised in any former transaction abroad.

Lastly, We conceive, that neither of the foregoing facts ought, in reason, or according to the method of Parliament, to be ordered to be omitted, because, till the Committee had formed the address, pursuant to the order, it was impossible to know what use would be made of those facts; for as they might have been improperly applied, and then would have been justly rejected, so there might have been so great use made of them, and so opposite to the design of the House, in the intended address, that it will be improper to omit them.

Thomas Osborne, Duke of Leeds.  
Thomas Tufton, Earl of Thanet.

John Granville, Lord Granville.  
 William Craven, Lord Craven.  
 John Sheffield, Marquis of Normanby.  
 John Jeffreys, Lord Jeffreys.  
 Thomas Thynne, Viscount Weymouth.  
 Daniel Finch, Earl of Nottingham.  
 Charles Howard, Lord Howard of Escrick.  
 Montague Bertie, Earl of Abingdon.  
 Henry Yelverton, Viscount de Longueville.  
 Price Devereux, Viscount Hereford.  
 Thomas Sprat, Bishop of Rochester.

## CXXV.

MARCH 18, 1701.

The following resolution was proposed. ‘It appears that the French King’s acceptance of the will of the King of Spain is a manifest violation of the Treaty, and [we] humbly advise the King that in all future Treaties with the French King his Majesty do proceed with such caution as shall carry with it a real security.’ It was agreed that this clause should go to the Committee to be one of the heads for the address.

The following protest was therefore entered.

1st, Because it must be construed to be an approbation of the treaty, which (as we conceive) was not intended by the House.

2ndly, Because it is impossible to know the full meaning and extent of real security.

Daniel Finch, Earl of Nottingham.  
 John Sheffield, Marquis of Normanby.  
 Laurence Hyde, Earl of Rochester.  
 Montague Bertie, Earl of Abingdon.  
 John Granville, Lord Granville.  
 Thomas Thynne, Viscount Weymouth.  
 Francis North, Lord Guilford.  
 Sidney Godolphin, Lord Godolphin.

## CXXVI.

MARCH 20, 1701.

On this day the Lords drew up an address to the King, embodying their opinions as to the present crisis. They lament that the secret treaty (of the 21st of February, 1701) made with the French King had been of very ill consequence to the peace and safety of Europe; speak of

it as a fatal treaty, and profess that they cannot find that it was considered in any of the King's Councils, or that the draft was ever laid before the King at any meeting of the Council, much less advised or approved by the Council, or Committee of Council; ask the King to require and admit the advice of his natural born subjects in all matters of importance, and to constitute a Council of such persons, to whom he might impart all affairs, at home and abroad, which may any way concern him and his dominions; and point to the superior interest which natives have over strangers in knowing the country, and of showing zeal for the public service. In conclusion, they say that the acceptance of the King of Spain's will was a manifest violation of the treaty, and advise the King to be cautious, &c., according to the language of the resolution referred to under the previous protest.

It was moved to send to the House of Commons for their concurrence with this address, and the motion was negatived by 45 to 27. The names of three Lords—Rochester, Devonshire, and the Bishop of Oxford—precede the protest which follows.

1st, Because we conceive that the last clause in the address does necessarily imply a war, and that a very long one, by reason of the extent, unintelligible at least to us, of a real security, and the great improbability of obtaining any terms of that kind; and since this necessarily implies great supplies, which cannot be granted without the House of Commons, we think their concurrence, in this advice, absolutely necessary, and that it is very improper for us to desire that of the King, which, for want of such concurrence of the Commons, we conceive, his Majesty will not think fit or prudent for him to grant.

2ndly, We conceive all the other parts of the address very fit to be communicated to the House of Commons, for upon the success of it depends the future happiness of this nation; and as we cannot doubt of the readiness of the Commons to join in any proper measures towards it, so we think their concurrence in it would highly contribute towards the obtaining a gracious answer from his Majesty; and we cannot but think it reasonable that the advice of the whole nation, assembled in Parliament, should be made known to his Majesty upon this occasion.

3rdly, Having desired the House of Commons to permit Mr. Secretary Vernon, a member of their House, to come to a Committee of Lords to inform them of some matters relating to this treaty; we apprehend, that the House of Commons may think it extraordinary, and not suitable to the good correspondence (which is highly necessary) between the two Houses, not to acquaint them

with the things which have come to our knowledge, partly by the information of their own member.

4thly, And having been otherwise informed of some transactions relating to this treaty between the Earl of Portland and Mr. Secretary Vernon by letters, of which we have not had a full account, we think it may be very useful to the public to communicate this address to the Commons, who have better opportunity than we have had of enquiring into this matter, which seems to be yet in the dark, and which their own member may help to explain to them.

Thomas Osborne, Duke of Leeds.  
 John Sheffield, Marquis of Normanby.  
 Henry Yelverton, Viscount de Longueville.  
 Daniel Finch, Earl of Nottingham.  
 John Granville, Earl of Bath.  
 Thomas Thynne, Viscount Weymouth.  
 John Granville, Lord Granville.  
 Montague Bertie, Earl of Abingdon.  
 John Jeffreys, Lord Jeffreys.  
 William Craven, Lord Craven.  
 Francis North, Lord Guilford.  
 Robert Carey, Lord Hunsdon.  
 Thomas Tufton, Earl of Thanet.  
 Hugh Willoughby, Lord Willoughby of Parham.  
 Nathaniel Crewe, Lord Crewe (Bishop of Durham).  
 Thomas Sprat, Bishop of Rochester.  
 Anthony Grey, Earl of Kent.  
 Robert Leke, Earl of Scarsdale.  
 Henry Compton, Bishop of London.  
 Charles Dormer, Earl of Carnarvon.  
 John Poulett, Lord Poulett.

## CXXVII.

APRIL 16, 1701.

The Commons having impeached the four Lords, it was moved that an address be presented to the King 'that he will be pleased not to pass any censure or punishment against the four noble Lords, who stand impeached of high crimes and misdemeanours, until the impeachments depending against them in this House shall be tried.' This resolution was carried by 49 to 29, and the following protest was inserted, but was expunged the same day.

*1st, Because, we conceive, it is contrary to the method of proceeding in Parliament, to take notice in this House of what is represented only, by some Lords, to have passed in the other.*

*2ndly, And it is not proper to address the King on a subject that is not before this House to judge of, which may engage this House in what is indecent towards his Majesty, and may be of ill consequence between the two Houses.*

Hugh Willoughby, Lord Willoughby of Parham.  
 Robert Leke, Earl of Scarsdale.  
 Edward Montagu, Earl of Sandwich.  
 John Sheffield, Marquis of Normanby.  
 Charles Dormer, Earl of Carnarvon.  
 James Butler, Duke of Ormond.  
 Anthony Grey, Earl of Kent.  
 Charles Townshend, Viscount Townshend.  
 Thomas Tufton, Earl of Thanet.  
 Laurence Hyde, Earl of Rochester.  
 Montague Bertie, Earl of Abingdon.  
 Thomas Thynne, Viscount Weymouth.  
 Charles Howard, Lord Howard of Escrick.  
 John Poulett, Lord Poulett.  
 John Ashburnham, Lord Ashburnham.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 Price Devereux, Viscount Hereford.  
 Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.  
 Robert Sutton, Lord Lexington.  
 John Granville, Lord Granville.  
 John Jeffreys, Lord Jeffreys.  
 Francis North, Lord Guilford.  
 William Legge, Lord Dartmouth.

## CXXVIII.

APRIL 16, 1701.

The protest given above having been immediately expunged by 28 votes to 22, the following protest is entered.

Because it is the privilege of the Peers to enter their dissent, and it has been the ancient practice to enter also their reasons of such dissent, of which the Lords that so protest are the most proper judges, as well knowing what arguments persuaded them to be of that opinion; and no reasons can be more proper than such as they conceive are founded upon matter of fact.

Edward Montagu, Earl of Sandwich.  
 James Butler, Duke of Ormond.  
 Charles Dormer, Earl of Carnarvon.

John Sheffield, Marquis of Normanby.  
 Lewis de Duras, Earl of Feversham.  
 Thomas Tufton, Earl of Thanet.  
 Laurence Hyde, Earl of Rochester.  
 Robert Leke, Earl of Scarsdale.  
 Thomas Thynne, Viscount Weymouth.  
 Charles Townshend, Viscount Townshend.  
 Montague Bertie, Earl of Abingdon.  
 Charles Howard, Lord Howard of Escrick.  
 John Granville, Lord Granville.  
 William Legge, Lord Dartmouth.  
 Robert Sutton, Lord Lexington.  
 Hugh Willoughby, Lord Willoughby of Parham.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Henry Compton, Bishop of London.  
 John Poulett, Lord Poulett.  
 Francis North, Lord Guilford.  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 John Jeffreys, Lord Jeffreys.

## CXXIX.

JUNE 3, 1701.

The Commons had informed the House of Lords of their intention to proceed by way of impeachment with the four Lords on the 1st of April, but had exhibited no articles against two of them by June. On this the Lords draw up a report which they will send to the House of Commons in answer to a statement from the House of Commons sent them on the 31st of May. On the 20th of May the Lords had complained of the delay in exhibiting the articles, and the Commons resented this complaint by stating that the action of the Lords was unprecedented and unparliamentary, that 'they as prosecutors have a liberty to exhibit articles of impeachment in due time, of which they who are to prepare them are the proper judges.' They answer, first, that after a search of the Journals they find that in such cases there has never been so long a delay, and that it is a hardship to the two Lords (Portland and Halifax). The second clause of the report was, 'and as the Lords do not controvert what right the Commons may have of impeaching in general terms, if they please, so the Lords, in whom the judicature does entirely reside, think themselves obliged to assert, that the right of determining what is a due time, in which the particular articles of impeachment ought to be exhibited, is lodged in them only,' which the House amended by substituting for the last clause 'that the right of determining, &c.' the words 'that the right of limiting a convenient time for bringing the particular charge before them for avoiding delay in justice is lodged in them.'

On this—carried by 43 to 27—the following protest is inserted.

Because, we conceive, this assertion is new.

John Sheffield, Marquis of **Normanby**.  
 Laurence Hyde, Earl of **Rochester**.  
 Robert Bertie, Earl of **Lindsey**.  
 Daniel Finch, Earl of **Nottingham**.  
 Thomas Thynne, Viscount **Weymouth**.  
 John Churchill, Earl of **Marlborough**.  
 Other Windsor, Earl of **Plymouth**.  
 Aubrey de Vere, Earl of **Oxford**.  
 John Granville, Lord **Granville**.  
 John West, Lord **Delawarr**.  
 William Legge, Lord **Dartmouth**.  
 Henry Compton, Bishop of **London**.  
 John Jeffreys, Lord **Jeffreys**.  
 Francis North, Lord **Guilford**.  
 Charles Howard, Lord **Howard of Escrick**.  
 Thomas Sprat, Bishop of **Rochester**.  
 Robert Carey, Lord **Hunsdon**.  
 Sir Jonathan Trelawny, Bishop of **Exeter**.  
 Sidney Godolphin, Lord **Godolphin**.  
 Robert Sutton, Lord **Lexington**.  
 Hugh Cholmondeley, Lord **Cholmondeley of Cholmondeley**.

## CXXX.

JUNE 3, 1701.

The next clause in the message to the House of Commons ran as follows :

'The Lords hope the Commons, on their part, will be as careful not to do anything that may tend to the interruption of the good correspondence between the Houses, as the Lords shall ever be on their part; and the best way to preserve that, is for neither of the two Houses to exceed those limits which the law and custom of Parliaments have already established.' It was affirmed, and the following protest inserted.

Because we know not that the law and custom of Parliaments have established any certain limits.

[The persons marked thus \* voted for the condemnation of Sommers, those † were absent.]

- \* Robert Bertie, Earl of **Lindsey**.
- \* John Sheffield, Marquis of **Normanby**.
- \* Laurence Hyde, Earl of **Rochester**.
- \* Daniel Finch, Earl of **Nottingham**.
- \* Montague Bertie, Earl of **Abingdon**.
- \* Charles Howard, Lord **Howard of Escrick**.
- \* Thomas Thynne, Viscount **Weymouth**.
- \* John Churchill, Earl of **Marlborough**.
- \* Other Windsor, Earl of **Plymouth**.

- \* Aubrey de Vere, Earl of Oxford.
- † John Granville, Lord Granville.
- \* John West, Lord Delawarr.
- \* Henry Compton, Bishop of London.
- \* John Jeffreys, Lord Jeffreys.
- \* William Legge, Lord Dartmouth.
- \* Thomas Sprat, Bishop of Rochester.
- \* Francis North, Lord Guilford.
- \* Robert Carey, Lord Hunsdon.
- \* Robert Sutton, Lord Lexington.
- \* Sir Jonathan Trelawny, Bishop of Exeter.
- \* Sidney Godolphin, Lord Godolphin.
- † Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.

## CXXXI.

JUNE 9, 1701.

The difference between the Lords and Commons as to the 'right' of the former 'to appoint a day for the trial of any impeachment depending before them, if they see good cause for it, without any previous signification from the Commons of their being ready to proceed' continued, and the Lords collect and enter 'precedents for the course of action which they have adopted.' It was then moved that a conference should be held with the Commons, and decided in the negative.

On which the following protest is entered.

Because the Lords, in the year one thousand six hundred and seventy-nine, consented to a committee of Lords and Commons, for regulating the trials of the Popish Lords; and therefore the refusing to comply with the Commons in the same request at this time will be (in our opinion) a great obstacle to the trials of the impeached Lords.

- \* Charles Seymour, Duke of Somerset.
- John Sheffield, Marquis of Normanby.
- \* William George Richard Stanley, Earl of Derby.
- \* Basil Feilding, Earl of Denbigh.
- Laurence Hyde, Earl of Rochester.
- Montague Bertie, Earl of Abingdon.
- \* Charles Mordaunt, Earl of Peterborough (Earl of Monmouth).
- Thomas Thynne, Viscount Weymouth.
- Daniel Finch, Earl of Nottingham.
- John West, Lord Delawarr.
- Henry Compton, Bishop of London.
- Francis North, Lord Guilford.
- William Legge, Lord Dartmouth.
- Sir Jonathan Trelawny, Bishop of Exeter.

Charles Howard, Lord Howard of Escrick.  
 Aubrey de Vere, Earl of Oxford.  
 \* Charles Dormer, Earl of Carnarvon.  
 Sidney Godolphin, Lord Godolphin.  
 John Churchill, Earl of Marlborough.  
 Robert Sutton, Lord Lexington.

## CXXXII.

JUNE 11, 1701.

On this day the Lords resolved, ‘that no Lord of Parliament, impeached of high crimes and misdemeanours, and coming to his trial, shall upon his trial, be without the Bar.’

On this the following protest is inserted.

Because however reasonable this proposition may appear to us, yet we conceive it very improper to determine it before we have heard what the Commons can say upon it.

Daniel Finch, Earl of Nottingham.  
 Thomas Thynne, Viscount Weymouth.  
 Laurence Hyde, Earl of Rochester.  
 Montague Bertie, Earl of Abingdon.  
 Henry Compton, Bishop of London.  
 Francis North, Lord Guilford.  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 Thomas Sprat, Bishop of Rochester.  
 † Arthur Herbert, Earl of Torrington.

## CXXXIII.

JUNE 14, 1701.

On this day the Commons presented the articles of impeachment against Lord Halifax. At the same time a message was sent to the House of Commons to the effect, among other matters, that, in order that the public business may receive no interruption, the time desired by their Lordships for a free conference having elapsed, their Lordships desire another free conference in the Painted Chamber upon the subject of the last free conference.

To this message there is a protest.

We conceive it to be improper, and not agreeable to the methods of Parliament, to send for a second free conference before the first is determined, or that there is a vote of the House passed for insisting.

Basil Feilding, Earl of Denbigh.

Montague Bertie, Earl of Abingdon.  
 Thomas Thynne, Viscount Weymouth.  
 Charles Mordaunt, Earl of Peterborough.  
 Charles Dormer, Earl of Carnarvon.  
 John West, Lord Delawarr.  
 William Legge, Lord Dartmouth.  
 Henry Compton, Bishop of London.  
 Sir Jonathan Trelawny, Bishop of Exeter.  
 Thomas Sprat, Bishop of Rochester.

The Commons refused this conference on the ground of the indignity offered to the House of Commons by Lord Haversham. It appears that he had commented upon an expression of Mr. Harcourt, who (arguing on behalf of the Commons against the Lords' resolutions on the position of an impeached Peer, and his right to vote before his trial) said he wished their Lordships had sent their reasons as well as their resolutions, and of Sir Bartholomew Shower, who said of the latter resolution, 'that such a proceeding would be abhorrent from justice.'

#### CXXXIV.

JUNE 14, 1701.

The Commons sent a message to the Lords begging them to assist in forming a committee of both Houses for the prosecution of the impeached Lords. This the Lords refused, and the following protest is entered.

We conceive it to be improper, and not agreeable to the methods of Parliament, to pass a vote for insisting, before the first free conference is determined; or if it be determined, as we conceive it is not, the vote for insisting should have preceded the message for a second free conference.

Daniel Finch, Earl of Nottingham.  
 Montague Bertie, Earl of Abingdon.  
 Thomas Thynne, Viscount Weymouth.  
 Charles Mordaunt, Earl of Peterborough.  
 Thomas Tufton, Earl of Thanet.  
 John West, Lord Delawarr.  
 Henry Compton, Bishop of London.  
 William Legge, Lord Dartmouth.  
 Charles Dormer, Earl of Carnarvon.  
 Sir Jonathan Trelawny, Bishop of Exeter.

#### CXXXV.

JUNE 17, 1701.

The question was put whether the House shall go this day to the Courts

in Westminster Hall, in order to proceed with the trial of the Lord Somers, according to the order of the day, and affirmed.

On which a protest is inserted.

*We do conceive it very improper to proceed in this trial, before the preliminaries are adjusted, especially since some of the preliminaries are such as in our opinion are essentially necessary to the administration of justice.*

*And after such a protestation of the Commons as they have sent to us against the proceeding to a trial, and which we conceive is founded upon justice, and the reasonable method of Parliament, we apprehend our proceeding now to this trial may tend to the disappointment of all future trials on impeachments.*

Charles Seymour, Duke of Somerset.  
George Fitzroy, Duke of Northumberland.  
Henry Compton, Bishop of London.  
Robert Leke, Earl of Scarsdale.  
Thomas Jermyn, Lord Jermyn.  
John Sheffield, Marquis of Normanby.  
Daniel Finch, Earl of Nottingham.  
William George Richard Stanley, Earl of Derby.  
Laurence Hyde, Earl of Rochester.  
Charles Dormer, Earl of Carnarvon.  
Lewis de Duras, Earl of Feversham.  
John Churchill, Earl of Marlborough.  
Other Windsor, Earl of Plymouth.  
Montague Bertie, Earl of Abingdon.  
Thomas Tufton, Earl of Thanet.  
Aubrey de Vere, Earl of Oxford.  
Charles Mordaunt, Earl of Peterborough.  
John West, Lord Delawarr.  
George Booth, Earl of Warrington.  
Basil Feilding, Earl of Denbigh.  
Robert Sutton, Lord Lexington.  
Thomas Sprat, Bishop of Rochester.  
Robert Carey, Lord Hunsdon.  
William Legge, Lord Dartmouth.  
Charles Howard, Lord Howard of Escrick.  
Charles Butler, Lord Weston (Earl of Arran).  
Thomas Thynne, Viscount Weymouth.  
Hugh Cholmondeley, Lord Cholmondeley of Cholmondeley.  
John Jeffreys, Lord Jeffreys.  
Sidney Godolphin, Lord Godolphin.  
Sir Jonathan Trelawny, Bishop of Exeter.  
Francis North, Lord Guilford.

## CXXXVI.

JUNE 17, 1701.

A second protest was also lodged against putting the question for the acquittal of Lord Somers, which was also expunged by vote of June 18.

This protest has been recovered from the original MS. of the Journals, and some of the words are necessarily conjectural. There is however little doubt that the reading is substantially correct.

*Dissentient,*

*Because although the steps to hinder this trial had been legal and parliamentary, which we conceive they have not been, yet it is acting counter to the rules of any Court of Justice to acquit any person legally accused of any crime not only without hearing his accusers, but also without admitting the matters charged upon him, especially when, as this case is, the party accused has confessed some of the facts, and the nature of those facts hath not been considered, much less determined whether those facts be crime.*

Charles Seymour, Duke of Somerset.  
 William George Richard Stanley, Earl of Derby.  
 Basil Feilding, Earl of Denbigh.  
 Charles Dormer, Earl of Carnarvon.  
 Robert Leke, Earl of Scarsdale.  
 John Sheffield, Marquis of Normanby.  
 Laurence Hyde, Earl of Rochester.  
 Robert Bertie, Earl of Lindsey.  
 Other Windsor, Earl of Plymouth.  
 George Booth, Earl of Warrington.  
 Daniel Finch, Earl of Nottingham.  
 Edward Villiers, Earl of Jersey.  
 Thomas Thynne, Viscount Weymouth.  
 Lewis de Duras, Earl of Feversham.  
 Francis North, Lord Guilford.  
 Henry Compton, Bishop of London.  
 Charles Mordaunt, Earl of Peterborough.  
 John Churchill, Earl of Marlborough.  
 Robert Carey, Lord Hunsdon.  
 Thomas Sprat, Bishop of Rochester.  
 Thomas Tufton, Earl of Thanet.  
 Montague Bertie, Earl of Abingdon.  
 Charles Howard, Lord Howard of Escrick.  
 Robert Sutton, Lord Lexington.  
 John Jeffreys, Lord Jeffreys.  
 John West, Lord Delawarr.  
 Aubrey de Vere, Earl of Oxford.  
 Sir Jonathan Trelawny, Bishop of Exeter.

Thomas Jermyn, Lord Jermyn.  
William Legge, Lord Dartmouth.  
Sidney Godolphin, Lord Godolphin.

The final answer to the House of Commons as to the rights of the Lords with regard to impeachments may be found in the Lords' Journals of the 19th of June, 1701.

### CXXXVII.

JUNE 21, 1701.

Lord Haversham had been charged by the House of Commons with having insulted the House in a conference held on the 13th of June, and on the 19th of June he put his answer in. On the 21st of June, Lord Haversham 'desired to be prosecuted,' and the Lords resolved that he had sent his answer to the charge, and 'that unless the said charge be prosecuted against the said Lord Haversham, with effect, by the Commons, before the end of this session of Parliament, the Lords will declare and adjudge him wholly innocent of the said charge.'

On this the following protest was entered.

1st, Because the justice of our judgment of acquitting the Lord Sommers, depending on our right to name a peremptory day, I do conceive that by this vote that right is violated, the Commons being by it allowed to declare when they are ready to prosecute, before any day is by us named.

2ndly, Because having thought fit to name a day for the impeachment of the Lord Sommers, to be consistent to ourselves, we ought to pursue the same methods: nor does this, being a charge only, alter the case; for what is done in matters of greater moment may safely be pursued in cases of less concern.

3rdly, Because to me, there does not seem any need of farther prosecution on the Commons part in this matter, the fact and the nature of it being both fully before us.

William North, Lord North and Grey.

### CXXXVIII.

JUNE 28, 1701.

On this day the Lords took into consideration certain printed votes of the House of Commons reflecting on the conduct of the Lords in the recent trial of Lord Somers. These were met by counter resolutions of other Lords. The Commons also voted by 145 to 88, 'That all the ill consequences which may at this time attend the delay of supplies given by the Commons for preserving the public peace, and maintaining

the balance of Europe, by supporting our allies against the power of France, are to be imputed to those, who to procure an indemnity for their own enormous crimes, have used their utmost endeavours to make a breach between the two Houses.' To this the Lords made a counter resolution, 'That whatever ill consequences may arise from the so long deferring the supplies for this year's service, are to be attributed to the fatal counsel of putting off the meeting of a Parliament so long and to the unnecessary delays of the House of Commons.'

On this the following protest was entered.

Because though, I humbly conceive, it is evident to all Englishmen, that nothing could be more fatal to the interest of Europe, to the interest of the Protestant religion, and the safety of England, than the so long delay of the meeting of a Parliament after the death of the King of Spain, yet I cannot agree to the latter part of this vote, which lays imputations of unnecessary delays to this House of Commons.

Charles Mordaunt, Earl of Peterborough.

### CXXXIX.

FEBRUARY 20, 1702.

On the 1st of January, 1702, one hundred and seventeen Peers signed an address to the King, declaring that they could not delay expressing 'their just resentments of the Proceedings of the French King, in ordering and setting up the pretended Prince of Wales for King of England, and other his Majesty's Realms and Dominions, which they take to be the highest indignity that can be offered to his sacred Majesty and this Kingdom.'

On the 12th of February a Bill was introduced into the Lords to attain Mary, late wife of the late King James, of high treason, was read a second time, committed and reported on the 17th, and read a third time and passed on the 20th. The opposition taken to the Bill was founded on the allegation that Mary of Modena was acting as Queen Regent for the Prince, a fact notorious enough, but not provable. The Bill dropped in the Commons.

The following protest was entered.

Because there was no proof of the allegations in the Bill so much as offered, before the passing of it, which is a precedent that may be of dangerous consequence.

Charles Finch, Earl of Winchilsea.

Francis Newport, Earl of Bradford.

George Compton, Earl of Northampton.

Thomas Thynne, Viscount Weymouth.

John Jeffreys, Lord Jeffreys.

Francis North, Lord Guilford.  
 William Legge, Lord Dartmouth.  
 Henry Yelverton, Viscount Longueville.  
 William North, Lord North and Grey.  
 William Craven, Lord Craven.  
 Robert Leke, Earl of Scarsdale.  
 Lewis de Duras, Earl of Feversham.  
 Henry Compton, Bishop of London.  
 Other Windsors, Earl of Plymouth.  
 William Stawell, Lord Stawell.

## CXL.

FEBRUARY 24, 1702.

The Commons passed a Bill for ‘the better security of his Majesty’s person, and the succession of the Crown in the Protestant line, and for extinguishing the hopes of the pretended Prince of Wales, and all other pretenders, and their open and secret abettors.’ By ‘the other pretenders’ are probably meant the descendants of Henrietta, Duchess of Orleans, who had protested against the Act of Settlement. The Act is 13, 14 William III, cap. 22. It was strongly opposed in both Commons and Lords, the clause imposing the oath of abjuring the Prince of Wales being carried in the former House by one vote only. It was attempted in the Lords, first to excuse the Peers from taking it, and then to make it optional. The history of the Bill may be found in Burnet, Boyer, and Tindal. The Bill received the royal assent on the day of William’s death.

The following protest, of which the first clause was expunged, is entered on the Journals of the Lords.

*1st, We conceive that no new oath should be imposed upon the subject, forasmuch as those established by an Act made in the first year of the reign of his Majesty and the late Queen Mary were, together with our rights and liberties, ascertained in that Act under the terms of our submission to his Majesty, and upon which his Majesty was pleased to accept the crown; and which were enacted to stand, remain, and be the law of this Realm for ever; and which, we conceive, do comprehend and necessarily imply all the duty and allegiance of the subject to their lawful King.*

*2ndly, And much less should any new oath be imposed upon the Lords, with such a penalty as to lose their seats in Parliament, upon their refusing it; such a penalty being, in some measure, an intrenchment upon our constitution, and expressly contrary to the standing order of this House made the 30th day of April, 1675.*

3rdly, And if such an infringement of the rights of Peers might be admitted, yet in a matter of so great importance to all the Peers, we conceive, that in justice they should all have had notice of this matter, and been specially summoned to have attended the House upon so great an occasion ; which has not been done, though it was moved and humbly desired on behalf of the absent Lords.

4thly, And if any further evidence of the subjects fidelity were at this time necessary to be required, we conceive a new oath is no such evidence, nor any additional security to the government ; because those who have kept the oaths, which they have already taken, ought in justice to be esteemed good subjects ; and those who have broken them will make no scruple of taking or breaking any others that shall be required of them : and consequently this new oath may be of dangerous and pernicious consequence to the government, by admitting such ill men, who do not fear an oath, into the greatest trusts, and who, under the specious pretence and protection of this new oath, which is to free them from suspicion, will have greater opportunities of betraying their King and their country.

5thly, If a new oath were necessary, as we conceive it is not, yet the words of this oath are so very ambiguous, and have been so very differently construed by several Lords who have declared their sense of them, that this may become a snare to men's consciences, or tend to overthrow the obligation of an oath, by allowing men liberty to take it in their own sense ; whereas this, as all other oaths, ought to be taken in the sense of the imposer, which hath not been declared in this case, though we earnestly pressed it, and though it has been done in other cases of the like nature.

6thly, And, we conceive, that it necessarily follows from hence, that this oath can be no bond of union among those who do take it, nor any true mark of distinction between the friends and the enemies of this government ; and therefore repugnant to the very nature of a test.

Daniel Finch, Earl of Nottingham.  
Charles Finch, Earl of Winchilsea.  
Other Windsor, Earl of Plymouth.  
John Jeffreys, Lord Jeffreys.  
William Stawell, Lord Stawell.  
Robert Leke, Earl of Scarsdale.  
William Craven, Lord Craven.

Francis North, Lord **Guilford**.  
 Basil Feilding, Earl of **Denbigh**.

The reference to the 30th of April, 1675, applies to an order made on that occasion, and to the exceptions taken to the Peers' oath. The order is: 'That no oath shall be imposed by any Bill or otherwise upon the Peers, with a penalty in case of refusal to lose their places and votes in Parliament, or liberty of debates therein, and that this order be added to the standing orders of this House.' See also Protests xxxix, xl, xli, xlii. Seven other Peers, Lords de Longueville, Thanet, Feversham, Warrington, Craven, and the Bishops of London and Rochester, protest on the margin of the first clause.

## CXLI.

JANUARY 19, 1703.

An Act for settling an annuity on Prince George of Denmark, in case he survived the Queen, was put into Committee, where it was proposed by Lord de Longueville to leave out a clause declaring that in the event of the Queen's demise 'he should remain a member of the Privy Council, and the House of Peers, and enjoy all grants, &c.' The proposal was rejected, and the following protests were inserted.

1st, We dissent from this clause, because, we conceive, this is a Bill of aid and supply; and that this clause is altogether foreign to, and different from, the matter of the said Bill; and that the passing of such clause is therefore unparliamentary, and tends to the destruction of the constitution of this government.

2ndly, Because, we conceive, that a Parliamentary expedient might have been found, whereby his royal highness might, by an unanimous consent, have all the advantages designed him by this Bill, without the Lords being obliged to depart from what we conceive to be their undoubted right.

3rdly, Because, we conceive, that this clause was not necessary to enable his royal highness to enjoy the benefit of the said grant.

4thly, Because that this clause, which pretends to capacitate his royal highness to enjoy his peerage, notwithstanding the Act for the further limitation of the Crown, and better securing the rights and liberties of the subject, and which makes no provision for other Peers under the same circumstances, we conceive, may tend much to their prejudice.

Charles Benet, Lord **Ossulstone**.  
 William Bentinck, Earl of **Portland**.  
 Arthur Herbert, Earl of **Torrington**.

Charles Montagu, Earl of Manchester.  
 Nathaniel Fiennes, Viscount Say and Sele.  
 Evelyn Pierrepont, Earl of Kingston.  
 John Hough, Bishop of Lichfield and Coventry.  
 John Sommers, Lord Sommers.

## CXLII.

JANUARY 19, 1703.

A second protest is lodged against the clause relative to the grants made to George, Prince of Denmark for the following reasons.

1st, Because the said grants are not laid before the House (though desired) by which we are ignorant upon what considerations the same were granted.

2ndly, Because, we conceive, that the saving clauses are so far from having any relation to his royal highness, that if they signify any thing (without any respect to him) they prefer their payment before his.

Thomas Wharton, Lord Wharton.  
 Charles Seymour, Duke of Somerset.  
 Charles Spencer, Earl of Sunderland.  
 Charles Howard, Earl of Carlisle (Earl Marshal).  
 Charles Mohun, Lord Mohun.  
 Charles Paulet, Duke of Bolton.  
 John Lovelace, Lord Lovelace.  
 Richard Savage, Earl Rivers.  
 Thomas Grey, Earl of Stamford.  
 Algernon Capel, Earl of Essex.  
 William Cavendish, Duke of Devonshire.  
 George Nevile, Lord Abergavenny.  
 Nathaniel Fiennes, Lord Say and Sele.  
 Charles Townshend, Viscount Townshend.  
 John Poulett, Lord Poulett.  
 Thomas Tenison, Archbishop of Canterbury.  
 William Berkeley, Lord Berkeley of Stratton.  
 Charles Bodvile Robartes, Earl of Radnor.  
 William Lloyd, Bishop of Worcester.  
 John Williams, Bishop of Chichester.  
 Henry Herbert, Lord Herbert of Chirbury.  
 George Hastings, Earl of Huntingdon.  
 Lewis Watson, Lord Rockingham.  
 Richard Cumberland, Bishop of Peterborough.  
 John Hough, Bishop of Lichfield and Coventry.  
 John Evans, Bishop of Bangor.  
 Edward Russel, Earl of Orford.

## CXLIII.

JANUARY 22, 1703.

On the 19th of December, 1702, Lord Wharton appealed to the Lords against an order of the Exchequer, dated the 15th of July, 1701, on behalf of a Mr. Squire and a Mr. Thompson, praying that the order might be set aside. On the 7th of January the respondents petitioned the House. On the 22nd of January the petition of the respondents was dismissed, and the respondents were directed to answer. On the 8th of February the City of London petitioned the Lords, setting forth that Charles I had granted to certain trustees, on behalf of the city of London, the honour of Richmond and the lordship of Middleham, that the boundaries of these estates were taken in an inquisition, authorised by a commission of 15 James I, and duly executed, returned, and filed; that this return had been taken off the file, but was by order of the Exchequer, on the 15th of July, 1701, put on the file anew, and allowed to be a record of that Court, and that Lord Wharton is seeking to have the order discharged, and the survey taken off the file. On the 11th of February the Lords ordered the survey to be brought into the House, and after long debate, on the 12th of February, ordered a trial in the Court of Common Pleas as to the validity of the instrument, it being thought that the survey was written by Mr. Thompson, a clerk in the Exchequer Office, but at the same time forbidding that the said survey should be given in evidence. The question at issue was the boundary of the estates of certain parties and that of Lord Wharton, and the right to certain lead mines on the boundary which had been let for a term of years to Squire and others. On the 10th of November, 1702, Lord Wharton brought an action against Sir Benjamin Bathurst, Colonel Byerley, Sir William Robinson, and ten others, about the boundaries of the estate and the lead mine. The result was a verdict for the defendants. After this Lord Wharton laid his petition before the House of Lords on the subject of the survey, which had been lost from the Exchequer file, and had subsequently been replaced by an order of the Court. As the order of the Lords of the 12th of February forbade the production of the survey in Court and directed a new trial, the case was reheard on the 26th of November, 1703, and Lord Wharton obtained a verdict. On the 20th of January, 1704, Mr. Charles Bathurst petitioned the House of Commons, stated his case at length, declared that the order of the Exchequer against which the Lords had given relief to Lord Wharton was merely made by the Court ex officio, and to preserve their own record, that there was no cause before them and therefore no appeal, that the Lords by making the order of the 12th of February had exercised an original jurisdiction, that the rejection of the evidence contained in the survey was fatal to him on the second trial, and was equivalent to arbitrarily ousting him of his rights, that there was absolutely no suspicion as to the genuineness of the survey, and that the making such orders by the House of Peers will hereafter prove of fatal consequence to the rights and inheritance of the commons of England. On this the Commons resolved, '1. That the House of Lords, taking cognizance of and proceed-

ing upon the petition of Thomas, Lord Wharton, complaining of an order of the Court of Exchequer, having date the 15th of July, 1701, for filing the record of a survey of the honour of Richmond and lordship of Middleham, in the county of York, is without precedent and unwarrantable, and tends to the subjecting the rights and properties of all the commons of England to an illegal and arbitrary power. 2. That it is the undoubted right of all the subjects of England to make such use of the said record, as they might by law have done before the said proceedings in the House of Lords.' On the 27th of March the Lords met this resolution by the following. 'That the House of Commons taking upon them by their votes to condemn a judgment of the House of Lords, given in a cause depending before this House in the last Session of Parliament upon the petition of Thomas, Lord Wharton, and to declare what the law is, in contradiction of the proceedings of the House of Lords, is without precedent, unwarrantable, and an usurpation of a judicature to which they have no sort of pretence, and they order this resolution to be printed and published.' At this time the quarrels between the two Houses were so constant and violent as to call for animadversion in the Queen's speech at the close of the Session. The Aylesbury business, the Scotch plot, and the general attitude of the House of Commons at this time were strongly animadverted on in a pamphlet circulated at the time under the title of Legion's humble address to the Lords.

The following protest is inserted against that stage in the proceedings when the petition of Squire and other lessees of the lead mine is dismissed, and the Lords determine to investigate the validity of that survey which they subsequently decided should not be tendered in evidence on the second trial.

First, Because, we conceive, that by this, we assume a jurisdiction in an original cause, for these reasons :

1st, Because there has been no suit between the parties in the Exchequer, and consequently this petition cannot be called an appeal from that court.

2ndly, Although there was a suit in the Court of Chancery, yet one of the persons required to answer was not a party in that suit ; and therefore, as to him, at least it must be an original cause.

3rdly, Though all had been parties in the Chancery, yet it never was heard, that an appeal lay from one court that had no suit depending in it, because there was a suit depending in another court.

Secondly, Because no court can take any cognizance of a cause, in which that court cannot make an order ; but in this case, the House of Lords cannot make an order (because very many are concerned in this record, who are not before this House); therefore this House cannot take any cognizance of it.

Daniel Finch, Earl of **Nottingham**.  
 Thomas Osborne, Duke of **Leeds**.  
 Thomas Thynne, Viscount **Weymouth**.  
 Laurence Hyde, Earl of **Rochester**.  
 Thomas Sprat, Bishop of **Rochester**.  
 Sir Jonathan Trelawny, Bishop of **Exeter**.  
 William Nicholson, Bishop of **Carlisle**.  
 Charles Townshend, Viscount **Townshend**.  
 John Poulett, Lord **Poulett**.  
 William Legge, Lord **Dartmouth**.  
 Nathaniel Crewe, Lord **Crewe** (Bishop of Durham).

## CXLIV.

FEBRUARY 22, 1703.

The House of Commons sent up a Bill to the Lords under the title of 'An Act for providing that no persons shall be chosen Members of the House of Commons but such as have sufficient real estates.' The object of the Bill was to throw the representation into the hands of the country party. It was rejected in the Lords on the motion of going into Committee by 46 to 41.

The following protest is inserted.

Because the design of that Bill was for hindering of foreigners, and men of little or no estate, from being capable of taxing and disposing the rights and estates of all England, and might have received any reasonable alterations at a committee, which should have been judged convenient.

Henry Yelverton, Viscount de **Longueville**.  
 George Booth, Earl of **Warrington**.  
 Charles Townshend, Viscount **Townshend**.  
 John Sheffield, Marquis of **Normanby** (Lord Privy Seal).  
 Henry Grey, Earl of **Kent**.  
 Hugh Cholmondeley, Lord Cholmondeley of **Cholmondeley**.  
 Robert Leke, Earl of **Scarsdale**.  
 Thomas Thynne, Viscount **Weymouth**.  
 Robert Bertie, Earl of **Lindsay** (Lord Great Chamberlain).  
 Other Windsor, Earl of **Plymouth**.  
 Daniel Finch, Earl of **Nottingham**.  
 William Legge, Lord **Dartmouth**.  
 Montague Bertie, Earl of **Abingdon**.  
 Basil Feilding, Earl of **Denbigh**.  
 Charles Dormer, Earl of **Carnarvon**.  
 Christopher Vane, Lord **Barnard**.  
 William Stawell, Lord **Stawell**.  
 William Fermor, Lord **Lempster**.  
 John Poulett, Lord **Poulett**.

## CXLV.

FEBRUARY 24, 1703.

A considerable part of the Session of 1702-3 was occupied by the debate in the two Houses on the Occasional Conformity Bill, in which the Lords resisted the penalties which were to be imposed by the Act on Dissenters. The report on the conferences held between the two Houses, and of the reasons why the Lords adhered to their amendments on the Bill of the Commons is given at length in the Lords' Journals of this day. As the Commons would not agree to the amendments, the Bill dropped for a time. It was during the course of the debates on the subject that Defoe published his 'Shortest Way with Dissenters,' for which he was fined £200 and put in the pillory (7th of July, 1703). In order probably to let the public be informed of the attitude which they had taken, the Lords resolved to print the Bill, the amendments, the reasons for the amendments, the reasons of the Commons, and the report of the free Conference.

This calls forth the following protest.

Because the printing of Bills, and the proceedings on Bills, was never done, and therefore is unparliamentary.

It is an appealing to the people, and giving them a pretence of right to examine and judge of the Parliament, which otherwise would be unlawful: and this practice may be of pernicious consequence to the peace of the kingdom, and highly derogatory to the honour and dignity of the House of Lords.

Edward Montagu, Earl of Sandwich.

Robert Bertie, Earl of Lindsay (Lord Great Chamberlain).

Daniel Finch, Earl of Nottingham.

Basil Feilding, Earl of Denbigh.

Thomas Thynne, Viscount Weymouth.

William Legge, Lord Dartmouth.

## CXLVI.

MARCH 21, 1704.

On the third reading of 'an Act for raising recruits for the land forces and marines,' great opposition was shown to the measure, and an attempt was made to curtail its provisions, protests largely signed, but without reasons, being inserted at each stage of the Bill. The object of the Act was to enable the magistrates to press 'idle persons, as have no calling, or means of subsistence' into the army. The framers of the Act were charged with the intention of disturbing the Act of Succession, to which the displacement of some magistrates who were notorious for Whig principles, and the substitution of others who were credited with the design

of effecting a Jacobite reaction gave colour, according to Tindal. The following protest was inserted at the final stage of the Bill.

Because there is in this Bill the following clause, viz. 'That it shall and may be lawful for the Justices of the Peace of every County and Riding within this Realm, or any three or more of them, to raise and levy such able-bodied men, as have not any lawful calling or employment, or visible means for their maintenance or livelihood, to serve as soldiers, for the purposes in the Bill mentioned.'

Thomas Tufton, Earl of Thanet.  
 John Annesley, Earl of Anglesey.  
 William Legge, Lord Dartmouth.  
 Daniel Finch, Earl of Nottingham.  
 John Granville, Lord Granville.  
 John Poulett, Lord Poulett.  
 Laurence Hyde, Earl of Rochester.  
 John Leveson Gower, Lord Gower.  
 Francis Seymour Conway, Lord Conway.  
 Heneage Finch, Lord Guernsey.  
 Henry Compton, Bishop of London.  
 Arthur Herbert, Earl of Torrington.  
 William Stawell, Lord Stawell.  
 George Hooper, Bishop of Bath and Wells.  
 William Fermor, Lord Lempster.  
 Montague Bertie, Earl of Abingdon.  
 Francis North, Lord Guilford.  
 Nathaniel Crewe, Lord Crewe (Bishop of Durham).  
 John Thompson, Lord Haversham.

## CXLVII.

MARCH 24, 1704.

The story of the Scottish plot, concocted by Simon Fraser, Lord Lovat, the Earl of Perth, and others, and communicated to the Queen's Ministry by Sir John Maclean, together with the dispute between the two Houses of Parliament, arising from the fact that the Lords had taken the persons apprehended for complicity, and had examined them, is to be found in the Journals of the Lords and Commons, in Tindal, and in the Parliamentary History. The following protest was inserted at that stage of the proceedings, when Sir John Maclean was liberated from custody, in consideration of the revelations he had made, the Lords addressing the Queen, that she would grant him 'as full and complete a pardon as may consist with the safety of herself and her people, and provide for his subsistence.' After this the minority in the Lords moved that the part of the narrative which relates to Sir John Maclean, and the papers relating to his examination taken by the Earl of Nottingham, and laid before the

Queen, the Cabinet Council, and the House, are imperfect; are defeated on a division (41 to 30) and protest.

Because the main question seems to us to be the lightest censure that can be passed on the account of Sir John Maclean's discovery laid before the Queen, the Cabinet Council, and this House, by the Earl of Nottingham, which we conceive is very defective, as well in the substance of it, as in the form and manner in which it was taken.

It is not writ by his own hand, nor so much as signed by him.

There is no mention made of what questions were put to him, or of his answers thereunto.

There is no notice taken of his negotiations with the ministers of the court of St. Germains, who were all acquainted with this conspiracy, as Sir John Maclean has given in under his own handwriting to the Lords' Committees, which he acquainted them he had told to the Earl of Nottingham.

This omission is of the greatest consequence, in our opinion, because the papers given in by Ferguson and Lindsay, seem contrived to make it believed, that the court of St. Germains have no design to disturb her Majesty's Government during her reign, and that the Earl of Middleton does all he can to prevent conspiracies or designs against her.

Sir John Maclean also informed the Lords Committees of the correspondence intended to be carried on between him and the Earl of Perth; as also of the correspondence to be settled by Frazier and Murray, of which he was to be informed by Robert Murray, and which he told the Lords of the Committee he had acquainted the Earl of Nottingham of; and yet there is no notice taken of it in the said account laid before the House.

It being moved by some Lords that were against the main question, that Sir John Maclean should be sent for to the Bar, and be heard as to the particulars objected to the said account, and seconded and agreed to by other Lords that were for the question, that he should be brought to clear the matter.

The motion for sending for him was waved, and the previous question insisted upon.

Charles Seymour, Duke of Somerset.  
Algernon Capell, Earl of Essex.  
George Nevile, Lord Abergavenny.

Charles Paulet, Duke of Bolton.  
 Edward Russel, Earl of Orford.  
 Charles Lenox, Duke of Richmond.  
 Gilbert Burnet, Bishop of Salisbury.  
 Charles Spencer, Earl of Sunderland.  
 James Stanley, Earl of Derby.  
 Arthur Herbert, Earl of Torrington.  
 Lewis Watson, Lord Rockingham.  
 Charles Mohun, Lord Mohun.  
 John Sommers, Lord Sommers.  
 Charles Howard, Earl of Carlisle (Earl Marshal).  
 Charles Montagu, Lord Halifax.  
 Ralph Grey, Lord Grey of Warke.  
 Thomas Grey, Earl of Stamford.  
 Richard Lumley, Earl of Scarborough.  
 Thomas Wharton, Lord Wharton.  
 Charles Montagu, Earl of Manchester.  
 Richard Savage, Earl Rivers.  
 Henry Herbert, Lord Herbert of Chirbury.

## CXLVIII.

JANUARY 17, 1705.

The Earl of Bath (Charles Granville) was found on the 4th of September, 1701, ‘dead in his chair in his bedchamber, wounded in his head, with a brace of pistols by him, one discharged. It is said he had been melancholy for some time passed.’—Luttrell. He had been employed in diplomatic business in Spain as Lord Lansdown, had sat in the Lords from 1698 as Lord Granville, and previously had seen considerable military service in Germany. His father had been dead for only a fortnight when the Earl committed suicide. His son, according to Luttrell, was only five years old at his father’s death. In 1704 the trustees of the child brought in a Bill to enable them to grant leases of his estate during his minority, but the Bill dropped. A similar fate attended the present Bill, carried by 46 to 19, and against which the subjoined protest is entered. In 1709, the trustees petition for leave, and the petition is referred to the judges. The boy died in 1711 of small pox. The Lord Granville mentioned in the protest was the second son of the first Earl, and was created Lord Granville of Potheridge in 1702. He died without issue in 1707, and the estates were divided among the Leveson Gowers, the Paytons, and the Carterets, who married the three daughters of the first Earl of Bath.

For that the main foundation, and greatest motive for the legislative authority to intermeddle in the settlement of private men’s estates, is the desire and free consent of all parties concerned in the said settlement first had and obtained; and the Lord Granville, next heir to the present Earl of Bath, having, in his place in this House,

declared ‘that he conceived his interest, in that estate, to be prejudiced by this Bill, and that he could by no means give his consent to it.’

We do therefore humbly conceive, th<sup>e</sup> receiving this Bill to be contrary to the usual method of proceeding in all Bills of this nature; and therefore ought not to have been received.

Laurence Hyde, Earl of Rochester.  
 John Sheffield, Duke of Buckingham (Lord Privy Seal).  
 Charles Finch, Earl of Winchilsea.  
 Francis North, Lord Guilford.  
 Daniel Finch, Earl of Nottingham.  
 John Granville, Lord Granville.  
 William Craven, Lord Craven.  
 George Booth, Earl of Warrington.

#### CXLIX.

JANUARY 22, 1705.

Thomas Watson, Bishop of St. David's, was deprived for simony and other offences in 1699, a petition for leave to proceed against him having been presented as early as 1691, and proceedings having been taken before the 20th of August, 1694, when he was suspended by Archbishop Tillotson. After this sentence of deprivation he took his seat in the House of Lords, and in March 1700 the Lords debated how they might evict him from his temporalities, of which he refused to give up possession. In May 1701 he was excommunicated for contumacy. In 1703 he appears to have been still in possession of the temporalities, and to have defended himself. On the 23rd of November the Exchequer gave judgment that he was justly deprived. He brought a writ of error into the Lords in December 1704, which was rejected on the ground that he had not assigned errors in due time, but he is heard again on the 22nd of January, 1705, when his counsel argued that an archbishop could not deprive a bishop without a synod. The petition was rejected by 49 to 20. The see was vacant for nearly six years. There is an elaborate defence of Watson in Bodley Pamphlets, 263. See, on the whole case, Phillimore's Ecclesiastical Law, vol. i. p. 84.

The protest was expunged by a vote of the 25th of January, and has been recovered, for the first time, from the journals.

*1st, Because the Plaintiff in this writ of error was deprived by the order of the two and twentieth of December last, of some part of the time allotted to him by the Standing Orders of the House for assigning errors, after which order of the two and twentieth of December, he could not do it, without leave of the House, which he humbly asked by this Petition.*

*2ndly, Because the Question in this case concerned the jurisdiction assumed by the Archbishop alone to deprive a Comprovincial Bishop, which as we conceive, extremely deserved the consideration of the House of Lords, who only could determine finally the point on which the safety of the Church, and Religion established may depend.*

*3rdly, Because another writ of error may be brought before this House the next Parliament, and as it may be inconvenient to keep the see of St. David's long vacant, in expectation of the Determination of this cause by this House, so it would be very unfit, that there should be another Bishop of this Diocese, to sit in this House, while the question is controverted, on which his right, both to the diocese and seat in Parliament do depend.*

Thomas Tufton, Earl of Thanet.  
 Daniel Finch, Earl of Nottingham.  
 William North, Lord North and Grey.  
 Charles Finch, Earl of Winchilsea.  
 Heneage Finch, Lord Guernsey.  
 William Craven, Lord Craven.  
 George Hooper, Bishop of Bath and Wells.

For the first and third reason.

Montague Bertie, Earl of Abingdon.  
 Nathaniel Crewe, Lord Crewe (Bishop of Durham).

#### CL.

MARCH 2, 1705.

A clause exactly similar to that in the Army Bill of 1704 was introduced into the Act of this year, and is met by a protest in the same words signed by.

Thomas Tufton, Earl of Thanet.  
 John Annesley, Earl of Anglesey.  
 William Legge, Lord Dartmouth.

#### CLI.

NOVEMBER 15, 1705.

In a debate on the state of the Nation (Parliament met on the 25th of October), a question was proposed, 'That an humble address be presented to her Majesty, that her Majesty will be graciously pleased to invite the presumptive heir to the Crown of England, according to the Acts of Parliament made for settling the succession of the Crown to the Protestant line, into this Kingdom, to reside here,' and was negatived.

On this the following protest was entered.

Because we humbly conceive, the having a presumptive heir to the Crown residing within the Kingdom, would be a great strengthening of her Majesty's hands in the administration of the Government, a security to her royal person, and to the succession to the crown, as by law established in the Protestant line.

John Sheffield, Duke of Buckingham.  
 John Annesley, Earl of Anglesey.  
 Charles Finch, Earl of Winchilsea.  
 Francis Seymour Conway, Lord Conway.  
 Daniel Finch, Earl of Nottingham.  
 Edward Villiers, Earl of Jersey.  
 Lawrence Hyde, Earl of Rochester.  
 Charles Howard, Lord Howard of Escrick.  
 Montague Bertie, Earl of Abingdon.  
 John Thompson, Lord Haversham.  
 Thomas Leigh, Lord Leigh.

## CLII.

DECEMBER 3, 1705.

On Thursday, the 15th of November, the Lords resolved that they would go into Committee, to consider what may be fitting further to be done for the preservation of her Majesty's person and Government, and the Protestant Succession as by law established. On the 20th they nominate seven Lords Justices, the Archbishop of Canterbury, the Lord Chancellor, the Lord High Treasurer, the President of the Council, the High Admiral, the Privy Seal, and the Chief Justice of the Queen's Bench. They provide that the successor to the Crown should nominate by instrument under hand and seal such persons as may seem fit to act with the seven, and to revoke or alter the instrument, of which three copies or parts should be taken, one to be with 'the Minister of the successor,' another with the Archbishop, and a third with the Chancellor, and that the judges should prepare a Bill in conformity with these instructions. The Bill was read a first time on the 27th of November, a second time on the 28th, and committed on the 30th. On this occasion it was ordered that it should be an instruction to the Committee of the whole House to insert a clause restraining the Lords Justices from any repeal or alteration of the Act of Uniformity; but on its being proposed and carried that no further instruction be given to the Committee, a protest without reasons is signed by nineteen Peers. On the 3rd of December, when the Bill was read a third time, sundry riders were offered, which were all negatived: the first restraining the Justices from repealing divers Acts of Charles II against Popery, and inflicting the penalties of treason on such of the Justices as should concur with any such alteration; a second affording a similar protection to such Acts of William III and Anne as

guaranteed the Protestant Succession, and a third securing the Habeas Corpus Act, the Toleration Act, the Triennial Bill, and the Trials for Treason Act.

On the rejection of these riders the following protest is inserted.

Because, we conceive, the Acts, mentioned in the foregoing riders, are as necessary for the preservation of the Protestant religion, and the rights and liberties of the subjects of England, as the Act of Uniformity, in the opinion of the House itself, is for the preservation of the Church of England.

Henry Somerset, Duke of Beaufort.  
John Sheffield, Duke of Buckingham.  
Thomas Tufton, Earl of Thanet.  
John Annesley, Earl of Anglesey.  
George Compton, Earl of Northampton.  
Daniel Finch, Earl of Nottingham.  
Charles Dormer, Earl of Carnarvon.  
Laurence Hyde, Earl of Rochester.  
Robert Leke, Earl of Scarsdale.  
William North, Lord North and Grey.  
Thomas Thynne, Viscount Weymouth.  
Francis North, Lord Guilford.  
John Thompson, Lord Haversham.  
John Granville, Lord Granville.  
George Hooper, Bishop of Bath and Wells.  
Heneage Finch, Lord Guernsey.

### CLIII.

DECEMBER 3, 1705.

The Act referred to in the last protest was read a third time and passed. It dropped finally in the Commons.

The following protest is inserted after the Bill passed the Lords.

1st, Because it having been our humble opinion, that nothing can so firmly secure the succession to this Crown in the Protestant line, as the presumptive heir's residing in this Kingdom, and our proposal of an humble address to her Majesty for that purpose having been refused, this whole Bill also being founded on the said heir's being absent at the time of the Queen's demise, we fear the Bill may prove not only ineffectual to these good purposes for which it is designed, but dangerous also in preventing the said heir's coming hither in the mean time, by the opinion some have of the

successor's being so well secured, that no such further care needs to be taken about it.

2ndly, Because every one of the seven Lords Justices, constituted by this Bill, is therein made so far independent of the very successor, as not to be displaced by the said successor in that instrument, which is to be deposited here for the addition of more Lords Justices; the reason for which addition we think equally strong, by enabling also the successor to exclude, by the said instrument, any of those seven justices; which said justices may otherwise be found (when perhaps it will be too late) invested with too great a power, if they can ever be supposed capable of ill employing it.

3rdly, Which last objection we conceive to be of more weight, since it was refused by the House to restrain those future Lords Justices from repealing the following Acts, viz. An Act for preventing dangers which may happen from Popish recusants; and an Act for the more effectual preserving the King's person and Government, by disabling of Papists from sitting in either House of Parliament; the Act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas; the Act for the further security of his Majesty's person, and the succession of the crown in the Protestant line, and for extinguishing the hopes of the pretended Prince of Wales, all other pretenders, and their open and secret abettors; the Act for exempting their Majesties' Protestant subjects, dissenting from the Church of England, from the penalties of certain laws; the Act for the frequent meeting and calling of Parliaments; and the Act for regulating of trials in cases of treason and misprision of treason; which laws we account the very pillars of our constitution, and that consequently no subjects whatsoever ought to be intrusted with the power of passing any Act to repeal them, during the time, when it will be impossible for the successor to know anything of the matter, or so much as that the said successor is become our sovereign.

4thly, Because in this very Bill, which intrusts the Lords Justices with a power of giving the royal assent to laws of so dangerous a nature, and with all the executive power, yet, we conceive, they are restrained from revoking the least military commission, or disbanding any officer of the army, though never so much deserving to be suspected by them.

Lastly, We apprehend the great danger her Majesty may be

exposed to, since whatever is insufficient to secure the succession in the Protestant line, and may render it liable to difficulties or uncertainties, must also encourage ill designs against her sacred life; which may be thought the only obstacle in the way of such wicked persons, who may flatter themselves with the hopes of confusions after it.

Henry Somerset, Duke of Beaufort.  
 John Sheffield, Duke of Buckingham.  
 Thomas Tufton, Earl of Thanet.  
 John Annesley, Earl of Anglesey.  
 Daniel Finch, Earl of Nottingham.  
 John Thompson, Lord Haversham.  
 Charles Dormer, Earl of Carnarvon.

I dissent for the last four reasons.  
 John Granville, Lord Granville.  
 And I also.  
 William North, Lord North and Grey.  
 And I also.  
 Heneage Finch, Lord Guernsey.

## CLIV.

DECEMBER 6, 1705.

The attempt to legislate against the Dissenters by means of the Occasional Conformity Act had failed for three successive years, owing to the resolute attitude of the majority among the Peers, the minority always protesting in considerable numbers. During the Session of 1705-6, after the Regency Bill had passed the Lords, Lord Halifax alluded to a statement of the Earl of Rochester, as to the danger in which the Church was, and 'the tragical stories which had been published of late,' and moved that a day be appointed on which to take the matter into consideration. On the 6th of December, therefore, Lord Rochester began the debate, and defended the policy of the Occasional Conformity Bill. He was followed by Halifax, on the other side. The Bishop of London supported the views of Lord Rochester, and was answered by Burnet, Bishop of Salisbury. Other speakers on behalf of the Occasional Conformity Bill were Sharp, the Archbishop of York, Hough, Patrick, and Hooper, Bishops of Lichfield, Ely, and Wells, and the Duke of Leeds; while Lords Wharton and Sommers spoke in opposition. Ultimately the House by 61 to 30 adopted the following resolution: 'It is the opinion of the Committee, that the Church of England, as by law established, which was rescued from the extremest danger by King William III, of glorious memory, is now, by God's blessing, under the happy reign of her Majesty, in a most safe and flourishing condition; and that whoever goes about to suggest and insinuate, that the Church is in danger under her Majesty's administration, is an enemy to the Queen, the Church, and the Kingdom.'

On this the following protest is entered.

1st, We humbly conceive, there may be dangers to the Church always impending on several accounts; the prayer set forth to be used on the solemn fast days, under the head of a Prayer for Unity, imploring God Almighty's Grace, 'that everybody may seriously lay to heart the great dangers we are in, by our unhappy divisions,' shews plainly, that in the opinion of the compilers of that form of prayer, and in her Majesty's royal judgment, who commands it to be used in all the churches and chapels throughout England and Wales, there are very great dangers.

2ndly, We humbly conceive there may be very great dangers to the Church from abroad, where a person pretending to this Crown is publicly owned and maintained as King of England. And we humbly conceive the Church in danger likewise from a neighbour kingdom, which, though under her Majesty's sovereignty, during her life (which God long preserve) hath not by any means yet been induced to settle the same succession to the crown, as is established by law in this Kingdom, in the Protestant line; but, on the contrary, that succession has been abrogated by the Act of Security, which, with several other Acts lately passed in that kingdom, has been judged by this House, in the last Session, to be dangerous to the present and future peace of this Kingdom; and therefore we may justly fear, there are dangers from hence both to our Church and State.

3rdly, We humbly conceive there may be very great danger to the Church, for want of a law to prevent any persons whatsoever from holding offices of trust and authority, both in Church and State, who are not constantly of the communion of the Church established by law; and therefore on account of the unhappy divisions in the Kingdom, in points of religion and divine worship, as also on the account of the calamity of this age, in the too public and common disowning any religion at all.

4thly, Though we have an entire confidence in her Majesty's great zeal and piety to the Church, we dare not in duty to her Majesty's person, and to the service of her Government, condemn all such as may have fears in relation to the preservation of the Church and safety of the Crown.

Lastly, Being sincerely convinced, that these reasons, among some others mentioned in the debate, are sufficient to justify our

fears, we humbly conceive, that it is not a proper way to prevent dangers, by voting there are none.

John Sheffield, Duke of **Buckingham**.  
 Thomas Osborne, Duke of **Leeds**.  
 Henry Somerset, Duke of **Beaufort**.  
 George Compton, Earl of **Northampton**.  
 Thomas Tufton, Earl of **Thanet**.  
 Charles Finch, Earl of **Winchilsea**.  
 Robert Leke, Earl of **Scarsdale**.  
 Montague Bertie, Earl of **Abingdon**.  
 Thomas Thynne, Viscount **Weymouth**.  
 Charles Dormer, Earl of **Carnarvon**.  
 Daniel Finch, Earl of **Nottingham**.  
 Laurence Hyde, Earl of **Rochester**.  
 Francis Seymour Conway, Lord **Conway**.  
 Henry Compton, Bishop of **London**.  
 William North, Lord **North and Grey**.  
 Peregrine Osborne, Lord **Osborne**.  
 John Annesley, Earl of **Anglesey**.  
 William Craven, Lord **Craven**.  
 Charles Howard, Lord **Howard of Escrick**.  
 Basil Feilding, Earl of **Denbigh**.  
 James Brydges, Lord **Chandos**.  
 John Granville, Lord **Granville**.  
 George Hooper, Bishop of **Bath and Wells**.  
 Heneage Finch, Lord **Guernsey**.  
 Francis North, Lord **Guilford**.

I dissent for the first, second, and fourth reasons.

John Thompson, Lord **Haversham**.

### CLV.

FEBRUARY 3, 1707.

It was moved, in the debates on the Articles of Union between England and Scotland, that there be inserted in the Act of Union, as a fundamental condition of the intended Union, particular and express words, declaring perpetual and unalterable, an Act of Parliament (25 Charles II, cap. 2) entitled 'An Act for preventing dangers which may happen from Popish recusants.' The motion was negatived by 60 to 33, on which the following protest was inserted.

We conceive, that this Act deserves to be particularly mentioned, and not left to doubtful constructions, because as it was at first made to secure our Church, then in danger by the concurrence of Papists and Dissenters to destroy it, so we have found by experience, both in the reign of King Charles II and King James II,

that it was the most effectual means of our preservation, by removing from their employments the greatest enemies of our Church; and particularly in the reign of the late King James, the assuming of a dispensing power, and the illegal practices, by closetting and corrupting the Members of Parliament, were chiefly levelled against this Test Act.

George Compton, Earl of Northampton.  
 Thomas Tufton, Earl of Thanet.  
 Henry Somerset, Duke of Beaufort.  
 Daniel Finch, Earl of Nottingham.  
 Robert Leke, Earl of Scarsdale.  
 Laurence Hyde, Earl of Rochester.  
 William Craven, Lord Craven.  
 John Annesley, Earl of Anglesey.  
 John Sharp, Archbishop of York.  
 Charles Howard, Lord Howard of Escrick.  
 John Sheffield, Duke of Buckingham.  
 Henry Compton, Bishop of London.  
 Thomas Sprat, Bishop of Rochester.  
 Thomas Lennard, Earl of Sussex.  
 William North, Lord North and Grey.  
 Nicholas Crewe, Lord Crewe (Bishop of Durham).  
 Francis North, Lord Guilford.  
 John Ashburnham, Lord Ashburnham.  
 Thomas Thynne, Viscount Weymouth.  
 Nicholas Strafford, Bishop of Chester.  
 John Granville, Lord Granville.  
 William Stawell, Lord Stawell.  
 Heneage Finch, Lord Guernsey.

## CLVI.

FEBRUARY 27, 1707.

The Act of Union between England and Scotland contained twenty-five articles, each one of which was put separately and affirmed in the House of Lords. Three Peers, Lords Granville, Haversham, and Stawell, dissent in toto from the whole, and enter their dissent accordingly. The Duke of Beaufort dissents from all but the second, that which limits the succession to the Electress Sophia and her heirs, being Protestants. One Peer, the Bishop of Bath and Wells, dissents from the last four, ‘having not been present at the passing the others.’ The ninth resolution, to which the subjoined is a protest, provides that whenever England raises £1,997,763 8s. 4*½*d. by a land-tax, Scotland shall contribute £48,000, and so on proportionately.

We humbly conceive, that the sum of forty-eight thousand pounds to be charged on the kingdom of Scotland, as the quota

of Scotland, for a land-tax, is not proportionable to the four shillings aid granted by the Parliament of England: but if, by reason of the present circumstances of that kingdom, it might have been thought it was not able to bear a greater proportion at this time, yet we cannot but think it unequal to this Kingdom, that it should be agreed, that when the four shillings aid shall be enacted by the Parliament of Great Britain to be raised on land in England, that the forty-eight thousand pounds now raised in Scotland shall never be increased in no time to come, though the trade of that kingdom should be extremely improved, and consequently the value of their land proportionably raised, which in all probability it must do, when this union shall have taken effect.

William North, Lord North and Grey.  
 Charles Howard, Lord Howard of Escrick.  
 Laurence Hyde, Earl of Rochester.  
 Thomas Leigh, Lord Leigh.  
 Francis North, Lord Guilford.

## CLVII.

FEBRUARY 27, 1707.

By the fifteenth article of the Union the customs of Scotland were estimated at £30,000 a year, those of England being computed at £1,341,559, the excise at £33,500 in Scotland, while that of England was reckoned at £947,602; and as the inhabitants of Scotland will be liable to English customs and excises, provision is made that £398,085 10s. shall be put into the hands of certain Commissioners, in order to compensate persons for the reform of the currency, for paying the capital stock of the Scotch, African and Indian companies, and that the overplus, added to all the difference between the actual receipts from the excise and customs, and the above-named sums, shall be devoted towards paying the public debt of Scotland, and stimulating the wool trade.

On this clause the following protest is entered.

Because, we humbly conceive, nothing could have been more equal on this head of the treaty, than that neither of the kingdoms should have been burthened with the debts of the other, contracted before the Union; and if that proposal, which we find once made in the minutes of the treaty, had taken place, there would have been no occasion to have employed the revenues of the kingdom of Scotland towards the payment of the debts of England, those revenues might have been strictly appropriated to the debts of that kingdom, and to any other uses within themselves, as should have been judged requisite, and there would have been then no need of

an equivalent of very near four hundred thousand pounds to be raised on England, within this year, for the purchase of those revenues in Scotland; which, however it may prove to be but a reasonable bargain upon a strict calculation, there does not seem to have been a necessity just now to have raised so great a sum, when this Kingdom is already burthened with so vast ones, for the necessary charges of the war.

Laurence Hyde, Earl of Rochester.  
William North, Lord North and Grey.  
Thomas Leigh, Lord Leigh.  
Francis North, Lord Guilford.

## CLVIII.

FEBRUARY 27, 1707.

The twenty-second clause in the Act of Union regulates the elections of the Scottish contingent to the House of Lords, which was to be sixteen. The number of Scotch Peers sitting in Parliament at the time of the Union was very large, consisting of eight dukes, four marquises, seventy-two earls, nineteen viscounts, and forty-nine lords,—one hundred and fifty-two. The English House of Lords contained at this time twenty-one dukes, one marquis, sixty-four earls, nine viscounts, and sixty-seven lords,—one hundred and sixty-two. But of this number sixteen were Roman Catholics, two, the Duke of Berwick and Lord Griffin, were outlawed, and twelve were minors. Add to these the Peers who were employed in the various services and disabled, and the number stated in the protest as the customary attendance in the House is not under-estimated. The dislike and jealousy felt by the English nobility towards the Scotch peerage is well exhibited in the memorable resolution of the 20th of December, 1711, when the House determined that no person being a Scotch peer at the time of the Union could sit in the Lords as a Peer of Great Britain, the case having been that of the Duke of Hamilton and Brandon. It was only on the 6th of June, 1782, that in consequence of the unanimous decision of the judges, the right to a writ of summons was accorded to the Duke of Hamilton of the day.

Because, we humbly conceive, in the first place, that the number of sixteen Peers of Scotland is too great a proportion to be added to the Peers of England, who very rarely consist of more than one hundred attending Lords in any one session of Parliament; and for that reason, we humbly apprehend, such a number as sixteen may have a very great sway in the resolutions of this House, of which the consequences cannot now be foreseen: in the second place, we conceive, the Lords of Scotland, who, by virtue of this treaty, are

to sit in this House, being not qualified as the Peers of England are, must suffer a diminution of their dignity to sit here on so different foundations, their right of sitting here depending entirely on an election, and that from time to time, during the continuance of one Parliament only; and at the same time we are humbly of opinion, that the Peers of England, who sit here by creation from the Crown, and have a right of so doing in themselves, or their heirs, by that creation for ever, may find it an alteration in their constitution, to have Lords added to their number, to sit and vote in all matters brought before a Parliament, who have not the same tenure of their seats in Parliament as the Peers of England have.

John Sheffield, Duke of Buckingham.  
 William North, Lord North and Grey.  
 Laurence Hyde, Earl of Rochester.  
 Thomas Leigh, Lord Leigh.  
 Francis North, Lord Guilford.

## CLIX.

FEBRUARY 27, 1707.

The last clause of the Act of Union runs, ‘That all Laws and Statutes in either Kingdom, so far as they are contrary to, or inconsistent with the Terms of these Articles, or any of them, shall from and after the Union cease and become void, and shall be so declared to be by the respective Parliaments of the said kingdoms.’

On this the following protest is inserted.

Because, there being no enumeration of what laws are to be repealed, it is conceived too great a latitude of construction thereupon is left to the Judges.

Laurence Hyde, Earl of Rochester.  
 William North, Lord North and Grey.  
 Thomas Leigh, Lord Leigh.  
 Francis North, Lord Guilford.

## CLX.

MARCH 4, 1707.

On the motion that the Act of Union do pass, the following protest is inserted. The names below the space are entered on the margin of the protest, and it is not therefore clear whether they adopt the reason.

Because the Constitution of this Kingdom has been found so very excellent, and therefore justly applauded by all our neighbours,

for so many ages, that we cannot conceive it prudent now to change it, and to venture at all those alterations made by this Bill, some of them especially being of such a nature, that as the inconvenience and danger of them (in our humble opinion) is already but too obvious, so we think it more proper and decent to avoid entering farther into the particular apprehensions we have from the passing of this law.

Henry Somerset, Duke of Beaufort.  
 John Sheffield, Duke of Buckingham.  
 William Stawell, Lord Stawell.  
 Francis North, Lord Guilford.  
 John Granville, Lord Granville.  
 Thomas Leigh, Lord Leigh.  
 Daniel Finch, Earl of Nottingham.  
 John Annesley, Earl of Anglesey.  
 Thomas Tufton, Earl of Thanet.  
 Charles Finch, Earl of Winchilsea.  
 George Compton, Earl of Northampton.  
 Robert Leke, Earl of Scarsdale.  
 Thomas Thynne, Viscount Weymouth.  
 Heneage Finch, Lord Guernsey.

## CLXI.

FEBRUARY 7, 1708.

By Act, 6 Anne, chap. vi., entitled ‘An Act for rendering the Union of the two Kingdoms more entire and complete,’ provision is made that from the 1st of May, 1708, there shall be one Privy Council only for the two kingdoms. By the twentieth article of the Union, ‘All heritable offices, superiorities, heritable jurisdictions, offices for life, and jurisdictions for life, were reserved for the owners thereof as Rights of Property, in the same manner as they were enjoyed before the Union by the Laws of Scotland.’ These jurisdictions were abolished after 1745.

The following protest is inserted.

1st, Because the clause of this Bill, which relates to the Privy Council, determines the Privy Council of Scotland, so soon as the first day of May next, by which time the provision made in the same Bill, instead of the Privy Council, for the security of the peace by appointing Justices of the Peace, to be constituted under the Great Seal of Great Britain, in the several counties of Scotland, cannot be expected to take effect; and therefore we conceive, that if that clause had been framed so as not to take place till the 1st

of October next, as was proposed, the Privy Council of Scotland had been abolished, as certainly as by the present Bill, and with more security to the peace and tranquility of that part of the United Kingdom.

2ndly, Because the clause in the Bill which appoints the commissions and powers to the Justices of the Peace, authorises those Justices to proceed against offenders during the first fifteen days after the crime committed ; and that in the liberties of heritable offices and officers for life, which, at the time of the union of the two kingdoms, the Justices of the Peace (and all ordinary officers and ministers of justice) were by law excluded from doing ; and therefore we apprehend, that the last mentioned clause in the Bill might be construed to be an encroachment upon the twentieth article of the Union, and by that means be the occasion of raising great jealousies and discontents throughout that part of the United Kingdoms.

William Cowper, Lord Cowper (Lord Chancellor).  
Richard Savage, Earl Rivers.  
Sidney Godolphin, Earl Godolphin.  
Charles Seymour, Duke of Somerset.  
John Churchill, Duke of Marlborough.  
Thomas Herbert, Earl of Pembroke.  
George Brudenell, Earl of Cardigan.  
Scroop Egerton, Earl of Bridgwater.  
Charles Bodvile Robartes, Earl of Radnor.  
John Erskine, Earl of Mar.  
David Wemyss, Earl of Wemyss.  
William Kerr, Marquis of Lothian.  
Sir Jonathan Trelawny, Bishop of Winchester.  
James Ogilvie, Earl of Seafield.  
Hugh Cholmondeley, Earl Cholmondeley.  
Charles Berkeley, Earl of Berkeley.  
John Lindsay, Earl of Crawford.  
Archibald Primrose, Earl of Rosebery.  
Henry Herbert, Lord Herbert of Chirbury.  
Hugh Campbell, Earl of Loudoun.  
David Melville, Earl of Leven.  
David Boyle, Earl of Glasgow.  
John Dalrymple, Earl of Stair.  
Archibald Campbell, Earl of Ilay.  
John Campbell, Earl of Greenwich (Duke of Argyll).

## CLXII.

MARCH 15, 1709.

The Commons passed a Bill entitled ‘An Act for naturalising foreign Protestants’ (7 Anne, cap. v), reading it twice and passing it on the same day, by which provision was made that any person born out of the Queen’s allegiance shall on making certain subscriptions and taking certain oaths, be deemed to be natural born subjects; provided they receive the Lord’s Supper in some Protestant or reformed congregation within three months of their taking the oaths, such an act being testified by the minister and two credible witnesses.

Upon this the following protest was entered.

Because we humbly conceive, that this Bill of general naturalisation will be very prejudicial to the trade and manufactures of this nation, and may be of ill consequence to our liberties and religion.

Sir Jonathan Trelawny, Bishop of Winchester.  
 John Sheffield, Duke of Buckingham.  
 William North, Lord North and Grey.  
 Thomas Tufton, Earl of Thanet.  
 Daniel Finch, Earl of Nottingham.  
 Nicholas Leke, Earl of Scarsdale.  
 Francis North, Lord Guilford.  
 John Annesley, Earl of Anglesey.  
 Heneage Finch, Lord Guernsey.

## CLXIII.

MARCH 28, 1709.

‘An Act for improving the Union of the two Kingdoms,’ 7 Anne, cap. xxi, assimilated the trials for treason and misprision of treason in Scotland to the process in England. The preamble of the Act states that it is desirable that the laws of the two kingdoms should be as nearly as possible the same, and proceeds to say that after the 1st of July, 1709, the Queen, &c., may issue commissions of Oyer and Terminer in Scotland, under the Great Seal, three of the Lords of the Justiciary always being in the Commission, puts the possessor of a heritable jurisdiction in the Commission, puts the same penalties on conviction as in England, saves entails from forfeiture, abolishes torture, sets the qualification of a jurymen at 40s. sterling of annual value in an estate of inheritance or for life, abolishes certain descriptions of treason according to Scotch law, as theft in landed men, murder under trust, wilful fire-raising, firing coal-heughs, and assassination, protects Judges in Court by punishing their murderers with the penalties of treason, and the Queen’s Seal in Scotland by the same penalty against those who counterfeit it, makes certain

limitations during the life of the Pretender and three years after the next succession to the throne, but provides that after those events have passed, the list of witnesses shall be delivered to the persons indicted ten days before trial.

A rider was offered providing that in all cases, such copies shall be provided five days before the trial, the effect of this proviso being to get rid of the suspensory clauses of the Act. It was rejected by 40 to 25, and the following protest is entered.

We conceive it not for the safety of the subject, that the names of those witnesses, which shall appear endorsed on the indictment, when it comes from the grand jury, shall be concealed from the prisoner, who, by receiving notice of such witnesses, five days before his trial, may be enabled to discredit them, if he be innocent, and yet not enabled to escape in case he be guilty.

John Sheffield, Duke of **Buckingham**.  
 John Campbell, Earl of **Greenwich** (Duke of Argyll).  
 William Johnstone, Marquis of **Annandale**.  
 James Douglas, Duke of **Hamilton**.  
 Basil Feilding, Earl of **Denbigh**.  
 Nicholas Leke, Earl of **Scarsdale**.  
 James Graham, Duke of **Montrose**.  
 Charles Mordaunt, Earl of **Peterborough**.  
 John Leslie, Earl of **Rothes**.  
 John Ker, Duke of **Roxburghe**.  
 John Erskine, Earl of **Mar**.  
 John Lindsay, Earl of **Crawford**.  
 Hugh Campbell, Earl of **Loudoun**.  
 George Booth, Earl of **Warrington**.  
 James Douglas, Duke of **Dover** (Duke of Queensberry).  
 David Wemyss, Earl of **Wemyss**.  
 Archibald Primrose, Earl of **Rosebery**.  
 Archibald Campbell, Earl of **Ilay**.  
 Gilbert Burnet, Bishop of **Salisbury**.  
 James Ogilvie, Earl of **Seafield**.  
 John Poulett, Earl **Poulett**.  
 George Hamilton, Earl of **Orkney**.  
 Francis North, Lord **Guilford**.  
 Richard Lumley, Earl of **Scarborough**.

## CLXIV.

MARCH 28, 1709.

The following protest is entered against the whole Bill.

We humbly take leave to protest against the title, preamble, and body of this Bill, for the reasons following :

1st, We conceive the general title of this Bill very improper, because it does not express the particular purposes of it, which are, altering the laws of the northern part of Britain, and the method of trials in matters relating to treason; and because we apprehend, this Act will be so far from answering its title of improving the union, that we are humbly of opinion and sincerely persuaded, it may have a quite contrary effect.

2ndly, The preamble of this Bill may happen to give unnecessary grounds of suspicion to mistaken people, and there is a tendency towards a total alteration of the laws of Scotland, which cannot but create great uneasiness to that people, who rested in a confidence, that their private laws were secured to them by the articles of the union, so as not to be altered without the evident utility of the people of Scotland.

3rdly, It does not appear to be necessary, that new courts and jurisdictions should be created in a country, where the courts of justiciary were to be preserved in the exercise of their authority by the articles of the union, though it might be thought reasonable, that the same facts and offences might be esteemed treason and misprision of treason, and that the punishments might be likewise the same; and we do humbly conceive, that the commissions of oyer and terminer may be construed an impairing of the authority of the courts of justiciary in Scotland, and the entire alteration of the methods of trials may render it very difficult to prosecute any person for the crimes of treason, and very insecure for the people, who are to make their defence in unknown methods.

4thly, The general description of treason in this act, without specifying either the particular facts that shall be accounted treasonable, or the particular laws to be established in both kingdoms, is a just exception against the Bill; for it would have been a great satisfaction to the people of North Britain, if these laws had been reviewed in a parliament, where their representatives might have had the time to have examined the reasonableness of them, and had a share in the passing them; but the enacting all the laws in gross, as the laws of England, without entering into any detail or consideration of them, may create great uneasiness.

5thly, The present laws of Scotland, in relation to the forfeitures, ought to have been considered as established upon the

most solid foundations, since they were settled upon the tender of the Crown to King William, and accordingly passed into laws at that time, which the subjects might well conclude they should never be deprived of: but the proviso in this Act relating to marriage settlements is only a remedy in part, and but a share of the just provisions made on behalf of the subjects in that remarkable and happy revolution, which so much improved the constitution of both kingdoms.

Lastly, We conceive, that whereas the qualification for a juryman to be sworn upon the pannel is, by this Act, affixed to the possession of forty shillings per annum, it ought to have been kept up to what the law of England now ordains in trial, which is, that the juryman be seized of ten pounds per annum in his own right, or that of his wife's.

John Sheffield, Duke of **Buckingham**.  
 William Johnston, Marquis of **Annandale**.  
 Francis North, Lord **Guilford**.  
 James Douglas, Duke of **Hamilton**.  
 Basil Feilding, Earl of **Denbigh**.  
 Gilbert Burnet, Bishop of **Salisbury**.  
 John Lindsay, Earl of **Crawford**.  
 James Graham, Duke of **Montrose**.  
 John Leslie, Earl of **Rothes**.  
 John Erskine, Earl of **Mar**.  
 John Ker, Duke of **Roxburghe**.  
 Charles Mordaunt, Earl of **Peterborough**.  
 Archibald Primrose, Earl of **Rosebery**.  
 Archibald Campbell, Earl of **Ilay**.  
 James Douglas, Duke of **Dover** (Duke of Queensberry).  
 Hugh Campbell, Earl of **Loudoun**.  
 James Ogilvie, Earl of **Seafield**.  
 John Campbell, Earl of **Greenwich** (Duke of Argyll).  
 David Wemyss, Earl of **Wemyss**.  
 George Hamilton, Earl of **Orkney**.

## CLXV.

MARCH 14, 1710.

The message of the House of Commons informing the Lords that it was intended to impeach Dr. Henry Sacheverel of divers high crimes and misdemeanours, was brought to the House of Lords on Thursday, the 15th of December; the impeachment being based on passages in two sermons preached by him on the 15th of August, 1709, at Derby, and

on the 5th of November, 1709, at St. Paul's, and which were afterwards published. The Commons resolved on the 12th of December that these sermons were malicious, scandalous, and seditious libels. Three days afterwards the Commons addressed the Queen, begging her to confer some dignity in the Church on Mr. Hoadley, for his strenuous justification of the principles on which the Queen and nation proceeded at the Revolution. The articles of impeachment were delivered to the Lords on the 12th of January. On the 13th of January, Sacheverel was bailed in £6000 for himself, and £3000 in each of two sureties, Dr. Lancaster and Dr. Bowes, the former of whom was Vice-Chancellor of Oxford University. The trial commenced on the 27th of February, 1710, and will be found in the State Trials, vol. v. p. 645. On Friday, the 10th of March, after the managers of the impeachment had replied, a question was raised by Lord Nottingham on which the Judges were consulted, and to which they returned an affirmative answer, to the following effect. 'Whether by the Law of England, and constant practice in all prosecutions by indictment or information for crimes and misdemeanors in writing or speaking, the particular words supposed to be criminal must not be expressly specified in such indictment or information.' Upon this the House determined to search for precedents of impeachments. These were reported to the House on the 14th of March, and a motion to adjourn being negatived, forty-nine Peers protesting, the following question was put and affirmed by 65 to 47. 'That by the law and usage of Parliament in prosecutions by impeachments for high crimes and misdemeanors by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments.'

Upon this the following protest was inserted.

1st, Because, we conceive, the law of the land is as much the rule of judicature in Parliament, as it is in the inferior Courts of Justice; and since, by the opinion of all the Judges in all prosecutions by information or indictment for writing or speaking, the particular words, supposed to be criminal, must be expressly specified in such information or indictment; and that this is the law of the land, confirmed by constant practice: we conceive, that there is the same reason and justice for specifying in impeachments the particular words supposed to be criminal, for otherwise a person who is innocent and safe by the law, out of Parliament, may nevertheless be condemned in Parliament.

For we conceive, that some reasons of law and justice, why the words supposed criminal must be specified in informations and indictments, may be, that the party accused may certainly know his charge, and be thereby enabled to defend his innocence; that the jury may know it too, and be enabled thereby the better to apply the evidence given by the witnesses to the matter of such

charge; and that the Judges themselves may the better judge of the nature of the crime, and of a punishment adequate to it; which in cases of misdemeanors, which are indefinite and innumerable, must extremely vary, according to the heinousness of the offence; and finally, that the House of Lords upon complaint to them, may also judge whether the fine, which is usually one of the punishments for misdemeanors, do not exceed the demerit, especially since by the Bill of Rights, exorbitant fines are declared to be illegal; which reasons seem to be fully as strong, in the case of impeachments, as in indictments and informations: for the particular words are as necessary to enable the Lords to determine uprightly and impartially, as the Jury or Judges, and as necessary for the defence of the accused here, as in the courts below; and if there were to be a difference, it seems more necessary in this High Court, for the weightier the prosecution is, the more need has an unfortunate man of indulgence, and all lawful favour; and surely there cannot be a heavier load upon a man, than an accusation by all the Commons of Britain.

2ndly, We do not remember any precedent insisted on for the maintenance of this resolution, save only the case of Dr. Manwaring, which, we conceive, could not warrant this resolution: for,

1. The words charged upon him by the Commons' declaration were not compared with the sermons, though it was desired, and consequently no Lord could say, they were not the words of the sermon; and, therefore, upon such uncertainty, we conceive, we could not ground a positive resolution.

2. The charge upon him taken out of his sermon, on the 4th of May, 1628, seems to be the very words by him spoken, for they were attested by ear-witnesses, who surely never were or could be admitted to attest their own conjectures of the scope of a sermon, and not specify the very words, for that would be to make the witnesses to be the judges.

3. Besides, in such a case as this, where the party did not insist upon any legal and just exceptions, of which he might have taken advantage, if he had made his defence, which he did not, but submitted and begged pardon; this ought not to be looked upon as a precedent or authority to justify the illegality of the form of that impeachment.

3rdly, But although this precedent were full, and express to

the point resolved, we humbly conceive, that one precedent is not sufficient to support a law and custom of Parliament, nor consequently a resolution declaring it; for surely there is great difference between a single instance, and a law and custom.

4thly, Especially since, we conceive, that in all the precedents, at least all that have appeared to us for four hundred years, of the prosecutions in Parliament, the particular words charged as criminal, have been constantly expressed in the articles or declarations of impeachments.

E. 2. *Exilium Hugonis le de Spencer patris et filii*, the first article was, for making a bill in writing, the tenor whereof was particularly set forth.

28 H. 6. *William de la Pool*, sixth article was, for words spoken by him sitting in the Council in the Star Chamber, *viz.* That he said, 'He had a place in the Council House of the French King, as he had here, and was as well trusted as he was here; and could remove from the French King the priviest man of his Council if he would.'

*Lord Finch.*

Art. 4, 5, 7. The opinions he delivered are set forth *in haec verba*, as also the times when he delivered them.

Another opinion delivered by him in the Exchequer Chamber, and Western Circuit, is set down in his express words.

*Doctor Cossens.*

Art. 11. He is charged with words delivered in a sermon at Durham; the words are these, 'The Reformers,' &c.

Art. 19. Charges him with words in like manner; the words were these, 'The King,' &c.

*1641. Berkeley.*

Art. 1. The words charged upon him are expressly mentioned.

Art. 4 and 5. That he subscribed an opinion *in haec verba*, which are specified.

Art. 6. The matter therein charged, though of record, was copied and delivered with the articles.

Art. 7, 8. The words spoken, and the place expressly set forth.

*1641. Judge Cravoley.*

Art. 1, 2, 3. For subscribing and giving opinions, set forth *in haec verba*.

*1641. Herbert.*

For exhibiting articles against the five members, which articles follow in these words, &c.

1641. Thirteen bishops impeached for making and promulgating, in 1640, several constitutions and canons, contrary to the King's prerogative, &c.

They demurred because the charge was general, but receded from this demur, because it appeared to be particular.

*1641. E. Strafford.*

Art. 2. Expresses the words spoken by him, and the time.

Art. 4. 20, 21, 22, 23, 24, 25, 27. Expresses the very words spoken by him.

Art. 26. Is in like manner with an inuendo of his meaning.

*1642. Archbishop Laud.*

Art. 1, 4, 10. Express the words spoken by him.

Art. 2. Expresses the words spoken by him, and the time and place.

So necessary did the Long Parliament itself think it, to pursue the forms of law in all their prosecutions.

Upon the whole therefore, we humbly conceive, that so great a number of precedents is sufficient to outweigh the single instance of Dr. Manwaring's case, how apposite soever it may seem to be to the present case, which, for the reasons we have mentioned, is far from being plain and clear, or having the full authority of a precedent; and the law and custom of Parliament, as we conceive, is to be determined by constant course and practice, and not one precedent, occasioned by so odious doctrines as those of Dr. Manwaring; nor can the contrary assertion to the abovesaid resolution be of any ill consequence to impeachments by the Commons, because it is easy for them to specify the words which offend them, but extremely difficult for the accused to defend himself without knowing them; and as all who are charged criminally have leave to make their defence, so they should also have allowed to them all lawful means for it.

Thomas Osborne, Duke of **Leeds**.

John Sharp, Archbishop of **York**.

Nicholas Crewe, Lord Crewe (Bishop of Durham).

Thomas Lennard, Earl of **Sussex**.

Thomas Tufton, Earl of **Thanet**.

Henry Somerset, Duke of **Beaufort**.

Daniel Finch, Earl of **Nottingham**.

Nicholas Leke, Earl of **Scarsdale**.

Basil Feilding, Earl of **Denbigh**.

John Annesley, Earl of **Anglesey**.

William Paston, Earl of **Yarmouth**.

Other Windsor, Earl of **Plymouth**.

Henry Bowes Howard, Earl of **Berkshire**.

Montague Bertie, Earl of **Abingdon**.

Laurence Hyde, Earl of **Rochester**.

George Compton, Earl of **Northampton**.

Thomas Thynne, Viscount Weymouth.  
 Robert Shirley, Lord Ferrers of Chartley.  
 Edward Villiers, Earl of Jersey.  
 Richard Lumley, Earl of Scarborough.  
 William North, Lord North and Grey.  
 Sir William Dawes, Bishop of Chester.  
 Richard Verney, Lord Willoughby de Broke.  
 William Stawell, Lord Stawell.  
 William Craven, Lord Craven.  
 Francis Seymour Conway, Lord Conway.  
 Peregrine Osborne, Lord Osborne.  
 Francis North, Lord Guilford.  
 Charles Howard, Lord Howard of Escrick.  
 William Fermor, Lord Lempster.  
 Henry Compton, Bishop of London.  
 Heneage Finch, Lord Guernsey.

## CLXVI.

MARCH 16, 1710.

The first article in Sacheverell's impeachment was, 'that he, in his sermon preached at St. Paul's, suggested and maintained that "the necessary means used to bring about the said happy revolution are odious and unjustifiable; that his late Majesty in his declaration, disclaimed the least imputation of resistance; and that to impute resistance to the said revolution, is to cast black and odious colours on his late Majesty, and the said revolution." ' The Peers affirmed by 68 to 52 that the question 'whether the Commons have made good this article of impeachment,' should be put.

On this the following protest is entered.

Because, we humbly conceive, there are no reflections therein contained on the memory of the late King William, nor the revolution, and that there is no offence charged therein upon Dr. Sacheverell against any known law of the land.

James Butler, Duke of Ormond.  
 John Sharp, Archbishop of York.  
 James Douglas, Duke of Hamilton.  
 David Wemyss, Earl of Wemyss.  
 John Annesley, Earl of Anglesey.  
 Henry Bowes Howard, Earl of Berkshire.  
 Thomas Osborne, Duke of Leeds.  
 Thomas Tufton, Earl of Thanet.  
 Henry Howard, Earl of Suffolk.  
 Laurence Hyde, Earl of Rochester.  
 Charles Talbot, Duke of Shrewsbury.  
 Richard Lumley, Earl of Scarborough.  
 John Sheffield, Duke of Buckingham.  
 John Poulett, Earl Poulett.

Daniel Finch, Earl of **Nottingham**.  
 William Craven, Lord **Craven**.  
 Henry Somerset, Duke of **Beaufort**.  
 William North, Lord **North and Grey**.  
 Thomas Thynne, Viscount **Weymouth**.  
 Basil Feilding, Earl of **Denbigh**.  
 Edward Villiers, Earl of **Jersey**.  
 Thomas Lennard, Earl of **Sussex**.  
 Richard Verney, Lord **Willoughby de Broke**.  
 Francis Seymour Conway, Lord **Conway**.  
 Robert Sutton, Lord **Lexington**.  
 William Stawell, Lord **Stawell**.  
 William Paston, Earl of **Yarmouth**.  
 David Carnegie, Earl of **Northesk**.  
 Montague Bertie, Earl of **Abingdon**.  
 Nicholas Leke, Earl of **Scarsdale**.  
 Peregrine Osborne, Lord **Osborne**.  
 William Fermor, Lord **Lempster**.  
 George Compton, Earl of **Northampton**.  
 Other Windsor, Earl of **Plymouth**.  
 Charles Howard, Lord **Howard of Escrick**.  
 Robert Shirley, Lord **Ferrers of Chartley**.  
 Henry Compton, Bishop of **London**.  
 Laurence Fiennes, Viscount **Say and Sele**.  
 John Erskine, Earl of **Mar**.  
 Francis North, Lord **Guilford**.  
 William Berkeley, Lord **Berkeley of Stratton**.  
 Thomas Leigh, Lord **Leigh**.  
 Nicholas Crewe, Lord **Crewe (Bishop of Durham)**.  
 Charles Butler, Lord **Weston (Earl of Arran)**.  
 Thomas Sprat, Bishop of **Rochester**.  
 William Legge, Lord **Dartmouth**.  
 Sir William Dawes, Bishop of **Chester**.  
 James Brydges, Lord **Chandos**.  
 George Hooper, Bishop of **Bath and Wells**.  
 Heneage Finch, Lord **Guernsey**.  
 Maurice Thompson, Lord **Haversham**.

## CLXVII.

MARCH 16, 1710.

The Lords then put the main question, whether the House of Commons had made good the first article of their impeachment.

To this the following protest is made.

Because, by the laws of the land, the laws of Parliament, and the inherent right of peerage, every Peer is to judge for himself, both of the fact as well as of the law, and cannot be precluded from it by any majority; which indeed must determine the case,

in respect of the criminal, but never did, nor can preclude any Lord from voting the party accused, Guilty, or Not Guilty of the fact, as well as of the crime of such fact.

Thomas Osborne, Duke of **Leeds**.  
 Thomas Tufton, Earl of **Thanet**.  
 Henry Somerset, Duke of **Beaufort**.  
 Basil Feilding, Earl of **Denbigh**.  
 Thomas Lennard, Earl of **Sussex**.  
 George Compton, Earl of **Northampton**.  
 Nicholas Leke, Earl of **Scarsdale**.  
 Nathaniel Crewe, Lord Crewe (Bishop of Durham).  
 William Paston, Earl of **Yarmouth**.  
 Daniel Finch, Earl of **Nottingham**.  
 Laurence Hyde, Earl of **Rochester**.  
 Richard Lumley, Earl of **Scarborough**.  
 William Ashburnham, Lord **Ashburnham**.  
 Richard Verney, Lord **Willoughby de Broke**.  
 Edward Villiers, Earl of **Jersey**.  
 Thomas Thynne, Viscount **Weymouth**.  
 William Craven, Lord **Craven**.  
 Sir William Dawes, Bishop of **Chester**.  
 William Stawell, Lord **Stawell**.  
 Robert Shirley, Lord **Ferrers of Chartley**.  
 William North, Lord **North and Grey**.  
 Maurice Thompson, Lord **Haversham**.  
 Francis Seymour Conway, Lord **Conway**.  
 Other Windsor, Earl of **Plymouth**.  
 Peregrine Osborne, Lord **Osborne**.  
 Henry Compton, Bishop of **London**.  
 Charles Howard, Lord **Howard of Escrick**.  
 David Carnegie, Earl of **Northesk**.  
 Thomas Sprat, Bishop of **Rochester**.  
 Montague Bertie, Earl of **Abingdon**.  
 George Hooper, Bishop of **Bath and Wells**.  
 Henry Bowes Howard, Earl of **Berkshire**.  
 Thomas Leigh, Lord **Leigh**.  
 Heneage Finch, Lord **Guernsey**.  
 William Fermor, Lord **Lempster**.

John Sheffield, Duke of **Buckingham**.  
 William Legge, Lord **Dartmouth**.  
 Francis North, Lord **Guilford**.  
 John Erskine, Earl of **Mar**.  
 Charles Talbot, Duke of **Shrewsbury**.

The same or nearly the same Lords protest against the vote on the second, third, and fourth articles, 'for the same reason as is given against the question upon the first.' The last five lords sign the protest at the side.

## CLXVIII.

MARCH 18, 1710.

The Lords voted by 65 to 53 that the question to be put to each Lord in Westminster Hall shall be, ‘is Henry Sacheverell, Doctor in Divinity, guilty of high crimes and misdemeanors,’ charged on him by the impeachment of the House of Commons. ‘And the answer therefore shall be guilty, or not guilty, only.’ Those who were for acquitting Sacheverell wished that the question put should be content or not content, or that each Peer should vote guilty, or not guilty, on each article.

The following protest was entered.

1st, We do humbly conceive, that the obliging every Lord to answer generally, guilty, or, not guilty, to a question containing all the articles of this impeachment, is a kind of tacking upon ourselves, by an unnecessary joining, matters of a different nature, and subjecting them to one and the same determination; and consequently may prejudice the right every Peer has to give a free affirmative or negative, since whoever thinks Dr. Sacheverell guilty of one part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

2ndly, We do humbly conceive there is, at least, a possibility, that though a majority of the House, if admitted to vote to the articles separately, may think him innocent upon each article, yet, by this method of a general answer, he may be condemned of all; which seems not to be consistent with the usual method of justice in this House.

3rdly, We do humbly conceive, that since the judgment of the House, in this case, ought to be a declaration of the law, the condition of the people will be most miserable, to have punishment inflicted for high crimes and misdemeanors, and not to have a possibility of informing themselves, what the high crimes and misdemeanors thereby punished are; for the people’s only guide is the law, and they can never be guided by what they can never be informed of: and we do humbly conceive, that this uncertainty being in the case of a clergyman for preaching it, may possibly create some fears in good men, when they preach some doctrines of the Church of England, particularly that of non-resistance; and may be made use of by ill ones, as an excuse for the neglect of that duty, which, upon some occasions, is required of them, even by the laws of the land.

James Butler, Duke of Ormond.

Henry Bowes Howard, Earl of Berkshire.

Henry Somerset, Duke of Beaufort.  
 John Annesley, Earl of Anglesey.  
 Thomas Tufton, Earl of Thanet.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Osborne, Duke of Leeds.  
 Basil Feilding, Earl of Denbigh.  
 George Compton, Earl of Northampton.  
 William Paston, Earl of Yarmouth.  
 Daniel Finch, Earl of Nottingham.  
 Henry Compton, Bishop of London.  
 William Stawell, Lord Stawell.  
 Laurence Hyde, Earl of Rochester.  
 Robert Shirley, Lord Ferrers of Chartley.  
 Thomas Lennard, Earl of Sussex.  
 Thomas Thynne, Viscount Weymouth.  
 John Poulett, Earl Poulett.  
 William Fermor, Lord Lempster.  
 William North, Lord North and Grey.  
 William Craven, Lord Craven.  
 Charles Howard, Lord Howard of Escrick.  
 Richard Verney, Lord Willoughby de Broke.  
 Peregrine Osborne, Lord Osborne.  
 Other Windsor, Earl of Plymouth.  
 Francis North, Lord Guilford.  
 Edward Villiers, Earl of Jersey.  
 Francis Seymour Conway, Lord Conway.  
 Maurice Thompson, Lord Haversham.  
 Thomas Leigh, Lord Leigh.  
 George Hooper, Bishop of Bath and Wells.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Heneage Finch, Lord Guernsey.

Forty-seven Lords afterwards protested against finding Sacheverell guilty on the 20th of March.

### CLXIX.

JANUARY 11, 1711.

On the 2nd of January, 1711, a message was sent by the Queen to both Houses, in these words, that 'Her Majesty having received notice that there has been an action in Spain very much to the disadvantage of King Charles's affairs, which having fallen particularly on the British forces, the Queen immediately gave directions for sending and procuring troops to repair this loss. Her Majesty acquaints this House with this intelligence, and likewise with her orders given thereupon; not doubting that Parliament will approve thereof, and concur in their assistance for remedying so great a misfortune.' An address was sent in answer to this message on the next day. By this defeat is apparently meant the reverses in Spain on the 8th of December, 1710, when Vendosme took

Brihuega, with 4,500 prisoners, and defeated Starenberg on the 10th (Luttrell)<sup>1</sup>. The battle of Almanza was fought on the 25th of April, 1707, and that of Almenara on the 27th of July, 1710. The Lords came to the conclusion that the policy insisted on by the Earl of Gallway (Henry de Ruvigny), and Lord Tyrawley (Charles O'Hara) of carrying on an offensive war 'had been the unhappy occasion of the battle of Almanza, and a great cause of our misfortune in Spain. The Earl of Gallway and Lord Tyrawley put in petitions begging for longer time to make answer, but their petitions were rejected by 57 to 46.

The following protest is inserted.

Because, that when a question was stated in the House, which seemed to us to import a censure on the conduct of the Earl of Gallway, Lord Tyrawley, and General Stanhope, the two Lords, being now in town, should, we conceive, have been heard in their defence, before the question passed, though they had not petitioned to put in their answers; much less ought the said petitions to have been rejected; and, we think, that their having been before examined only as to what they remembered concerning the Council of Valencia, when they did not know that any, much less what censure was intended upon the opinions given at that council, is sufficient to satisfy what we apprehend to be the rule of natural justice, that every one should have an opportunity of answering for themselves, at least upon their humble petitions, before what we take to be a public censure should pass upon them.

Maurice Thompson, Lord Haversham.  
 Charles Montagu, Lord Halifax.  
 Wriothesley Russell, Duke of Bedford.  
 Sir Jonathan Trelawny, Bishop of Winchester.  
 Henry Grey, Duke of Kent.  
 William Cavendish, Duke of Devonshire.  
 William Wake, Bishop of Lincoln.  
 Lionel Cranfield Sackville, Earl of Dorset.  
 John Sydney, Earl of Leicester.  
 Sidney Godolphin, Earl Godolphin.  
 Henry Fiennes Clinton, Earl of Lincoln.  
 John Moore, Bishop of Ely.  
 Charles Spencer, Earl of Sunderland.  
 John Ashburnham, Lord Ashburnham.  
 William Nicholson, Bishop of Carlisle.  
 Gilbert Burnet, Bishop of Salisbury.  
 Evelyn Pierrepont, Marquis of Dorchester.  
 Charles Trimnell, Bishop of Norwich.  
 Thomas Wharton, Earl Wharton.

<sup>1</sup> See also Stanhope's History, chap. xiii.

John Hough, Bishop of Lichfield and Coventry.  
 James Berkeley, Earl of Berkeley.  
 John Tyler, Bishop of Llandaff.  
 Thomas Grey, Earl of Stamford.  
 John Evans, Bishop of Bangor.  
 William Fleetwood, Bishop of St. Asaph.  
 Henry Herbert, Lord Herbert of Chirbury.  
 Richard Cumberland, Bishop of Peterborough.  
 Lewis Watson, Lord Rockingham.  
 Richard Lumley, Earl of Scarborough.  
 John Sommers, Lord Sommers.  
 Edward Russel, Earl of Orford.  
 John Hervey, Lord Hervey.  
 Charles Mohun, Lord Mohun.  
 William Cowper, Lord Cowper.  
 Scroop Egerton, Earl of Bridgwater.  
 John Churchill, Duke of Marlborough.

## CLXX.

JANUARY 11, 1711.

The following protest is directed against the resolution, that the plans of the Earl of Gallway, Lord Tyrawley, and General Stanhope had caused the disasters in Spain.

1st, Because, we conceive, that the proofs, which have been before the House, were not sufficient to warrant the facts, as they are stated in the question.

2ndly, Because, we conceive, that the said proofs do not support the consequences drawn from the facts stated in the question, especially the disappointment of the expedition against Thoulon, which, as we apprehend, was clearly occasioned by other causes, and not by the cause assigned in the question.

3rdly, Because, we conceive, it may be of dangerous consequence, if those, who may have the honour to serve the Queen in Spain, should from henceforth have reason to apprehend, that they may be censured for presuming to insist on such opinions, as shall appear to them to be most for the Queen's service, and the common cause, if contrary to the opinion of the King of Spain and his Ministers.

Charles Montagu, Lord Halifax.  
 Wriothesley Russell, Duke of Bedford.  
 Maurice Thompson, Lord Hawkesbury.  
 Sir Jonathan Trelawny, Bishop of Winchester.  
 William Cavendish, Duke of Devonshire.  
 William Wake, Bishop of Lincoln.

Henry Grey, Duke of Kent.  
 Henry Clinton, Earl of Lincoln.  
 John Sydney, Earl of Leicester.  
 John Moore, Bishop of Ely.  
 Lionel Cranfield Sackville, Earl of Dorset.  
 Evelyn Pierrepont, Marquis of Dorchester.  
 John Ashburnham, Lord Ashburnham.  
 William Nicholson, Bishop of Carlisle.  
 Charles Spencer, Earl of Sunderland.  
 James Berkeley, Earl of Berkeley.  
 Charles Trimnell, Bishop of Norwich.  
 Thomas Wharton, Earl Wharton.  
 Gilbert Burnet, Bishop of Salisbury.  
 Henry Herbert, Lord Herbert of Chirbury.  
 John Tyler, Bishop of Llandaff.  
 Thomas Grey, Earl of Stamford.  
 John Hough, Bishop of Lichfield and Coventry.  
 William Fleetwood, Bishop of St. Asaph.  
 Lewis Watson, Lord Rockingham.  
 John Evans, Bishop of Bangor.  
 Sidney Godolphin, Earl Godolphin.  
 John Hervey, Lord Hervey.  
 Charles Mohun, Lord Mohun.  
 Richard Cumberland, Bishop of Peterborough.  
 Richard Lumley, Earl of Scarborough.  
 Edward Russel, Earl of Orford.  
 Scroop Egerton, Earl of Bridgwater.  
 John Sommers, Lord Sommers.  
 William Cowper, Lord Cowper.  
 John Churchill, Duke of Marlborough.

## CLXXI.

JANUARY 12, 1711.

The Lords carried the following resolution by 68 to 48. ‘It appears by the Earl of Sunderland’s letters, that the carrying on the war offensively in Spain was approved and directed by the Ministers, notwithstanding the design of attempting Thoulon, which the Ministers at that time knew was concerted with the Duke of Savoy; and therefore are justly to be blamed for contributing to all our misfortunes in Spain, and to the disappointment of the expedition against Thoulon.’ At the same time the House of Lords voted its thanks to the Earl of Peterborough for his eminent services in Spain.

The following protest was made against the first resolution.

Because, that considering the army of the allies in Spain was to receive so great an addition of troops by the supply sent under the Earl Rivers, the general desire and expectation of the Kingdom to have the war brought to a speedy conclusion, and all other circum-

stances of the war, as it then stood; we are of opinion, that an offensive war was then fittest for those in her Majesty's service to advise; and we do not find reason by anything arising on the examinations and debates to be of another opinion; the occasion of fighting the battle of Almanza depending, as we conceive, on causes subsequent to that advice; the ill success of it, as we apprehend, being justly attributed to other manifest reasons; and the real design on Thoulon, as finally adjusted with the Duke of Savoy, and afterwards pursued, not requiring, as appears to us, the assistance of any force from Spain.

William Cavendish, Duke of Devonshire.  
Charles Paulet, Duke of Bolton.  
Sir Jonathan Trelawny, Bishop of Winchester.  
Richard Cumberland, Bishop of Peterborough.  
William Nicholson, Bishop of Carlisle.  
John Churchill, Duke of Marlborough.  
James Berkeley, Earl of Berkeley.  
William Wake, Bishop of Lincoln.  
Charles Trimnell, Bishop of Norwich.  
Henry Grey, Duke of Kent.  
Wriothesley Russell, Duke of Bedford.  
Evelyn Pierrepont, Marquis of Dorchester.  
William Fleetwood, Bishop of St. Asaph.  
Henry Clinton, Earl of Lincoln.  
Thomas Wharton, Earl Wharton.  
John Tyler, Bishop of Llandaff.  
John Sydney, Earl of Leicester.  
Thomas Grey, Earl of Stamford.  
Edward Russel, Earl of Orford.  
Scroop Egerton, Earl of Bridgwater.  
Charles Spencer, Earl of Sunderland.  
Lewis Watson, Lord Rockingham.  
Henry Herbert, Lord Herbert of Chirbury.  
Sidney Godolphin, Earl Godolphin.  
Lionel Cranfield Sackville, Earl of Dorset.  
Charles Mohun, Lord Mohun.  
Richard Lumley, Earl of Scarborough.  
Gilbert Burnet, Bishop of Salisbury.  
John Hervey, Lord Hervey.  
John Moore, Bishop of Ely.  
John Hough, Bishop of Lichfield and Coventry.  
James Stanley, Earl of Derby.  
William Cowper, Lord Cowper.  
John Sommers, Lord Sommers.  
John Ashburnham, Lord Ashburnham.  
John Evans, Bishop of Bangor.

## CLXXII.

FEBRUARY 3, 1711.

On this day the Lords went into a Committee of the whole House on the conduct of the war in Spain, and after debate, nine resolutions were come to on the subject of the resources at the command of the Earl of Gallway, and his consequent responsibility for the loss of the battle of Almanza. These resolutions affirm that Parliament had voted 29,395 men for the service of the war in Spain, and that before the battle the English commanders had a force of only 13,759. They further specify what was the deficiency in each of the contingents, and exonerate the Earl of Gallway from all blame in these particulars. The special deficiency in the regiments of Hotham and Hill amounted to 1,710 men. The first seven resolutions stating the deficiency and clearing the Earl of Gallway were read and agreed to. The eighth was as follows: 'That the two regiments upon the *Spanish Establishment* (i. e. Hotham's and Hill's) twice demanded, and provided for by Parliament, were not supplied as they ought to have been.' This was of course a censure on the late Ministry.

The following protest was entered.

Because the estimates in which the two regiments of Hill and Hotham were twice demanded, were agreed to by Parliament for the service of Portugal, as well as of Spain; and that mistake could not, in our opinion, have been more effectually or sooner supplied than from Ireland, and in the manner they were; for it appears to us, the said estimates were not agreed to till the 11th of January, 1706-7.

That the necessary order for transporting four other regiments from Ireland to Portugal were issued on the 8th of February next following; and that the money provided for the said two regiments, twice reckoned, was applied to the payment of the said four regiments from the time of their embarkation.

Charles Cornwallis, Lord Cornwallis.  
Sir Jonathan Trelawny, Bishop of Winchester.  
Wriothesley Russell, Duke of Bedford.  
William Cavendish, Duke of Devonshire.  
Richard Lumley, Earl of Scarborough.  
Gilbert Burnet, Bishop of Salisbury.  
Henry Grey, Duke of Kent.  
Charles Paulet, Duke of Bolton.  
Charles Montagu, Lord Halifax.  
Evelyn Pierrepont, Marquis of Dorchester.  
Thomas Fane, Earl of Westmorland.  
John Evans, Bishop of Bangor.

John Ashburnham, Lord **Ashburnham**.  
 Charles Howard, Earl of **Carlisle**.  
 William Nicholson, Bishop of **Carlisle**.  
 Henry Clinton, Earl of **Lincoln**.  
 John Tyler, Bishop of **Llandaff**.  
 Thomas Grey, Earl of **Stamford**.  
 Maurice Thompson, Lord **Haversham**.  
 William Wake, Bishop of **Lincoln**.  
 Charles Spencer, Earl of **Sunderland**.  
 Edward Russel, Earl of **Orford**.  
 Thomas Wharton, Earl **Wharton**.  
 John Sommers, Lord **Sommers**.  
 Hugh Cholmondeley, Earl **Cholmondeley**.  
 John Hough, Bishop of **Lichfield and Coventry**.  
 Henry Herbert, Lord **Herbert of Chirbury**.  
 Lewis Watson, Lord **Rockingham**.  
 Charles Trimnell, Bishop of **Norwich**.  
 Sidney Godolphin, Earl **Godolphin**.  
 Richard Cumberland, Bishop of **Peterborough**.  
 William Cowper, Lord **Cowper**.  
 John Hervey, Lord **Hervey**.  
 Thomas Pelham, Lord **Pelham**.

## CLXXIII.

FEBRUARY 3, 1711.

The Lords then affirmed the ninth resolution, ‘That by not supplying the deficiencies of the men given by Parliament for the war in Spain, the Ministers have greatly neglected that service, which was of the greatest importance.’ This was of course a censure on the late Ministry, and their supporters dissented from it in the subjoined protest. Part of the protest was by vote of the 9th of February ordered to be expunged, the minority protesting against this act of the majority. It should be observed that on the 8th of February the Lords divided on a question as to whether certain words indirectly suggesting that moneys granted by Parliament were not accounted for should stand. The expunged portions were disposed of by three votes, the first being carried by 53 to 33, Lord Sunderland being teller for the minority, Lord Abingdon for the majority. The passage in the original Journals was studiously expunged, but the whole has been recovered from the Minute Book of the House, where the clerk had, contrary to custom, entered the words on which the motion for expunging was made.

Because the resolution on the former particular is not as we conceive, a sufficient ground for this general vote, and the Committee of the whole House having declined to give any opinion, on the other particulars, we think it unreasonable to proceed to a censure on the Ministers for not supplying the deficiency, without first

resolving on the several particulars how far that deficiency might justly be imputed to them.

And we are of opinion, that all the money given by Parliament for the service of Spain and Portugal has been timely and punctually issued for that service; *and that the Ministers did from time to time supply the deficiencies of the forces given by Parliament for the war in Spain in the best manner and with the most expedition that the distance of the place and the apparent difficulties will admit of.*

*They having tried all methods for supplying the deficiency by sending recruits and making the drafts from regiments in Great Britain and Ireland, breaking the regiments in Spain to complete those that remained, and sending back the officers to raise new ones; and these methods proving chargeable, tedious, and uncertain, as soon as the posture of affairs in Italy made it possible by hiring foreign troops from the allies, which method has been found to be most effectual and least expensive.*

*And we the rather conceive that the Ministers cannot be justly charged with having neglected the war in Spain, when by the treaties concluded with the allies there was a great army agreed to be furnished for that service, and the execution of these treaties was pressed from time to time in the most earnest manner, and the part of Great Britain was so amply supplied, as enabled Her Majesty's generals to march twice to Madrid, and be in full possession of the capital city of Spain.*

Charles Cornwallis, Lord Cornwallis.  
Sir Jonathan Trelawny, Bishop of Winchester.  
William Cavendish, Duke of Devonshire.  
Richard Cumberland, Bishop of Peterborough.  
Charles Paulet, Duke of Bolton.  
Wriothesley Russell, Duke of Bedford.  
Henry Grey, Duke of Kent.  
Evelyn Pierrepont, Marquis of Dorchester.  
Thomas Fane, Earl of Westmorland.  
William Wake, Bishop of Lincoln.  
Charles Howard, Earl of Carlisle.  
Charles Spencer, Earl of Sunderland.  
William Ashburnham, Lord Ashburnham.  
William Nicholson, Bishop of Carlisle.  
John Tyler, Bishop of Llandaff.  
Henry Clinton, Earl of Lincoln.  
Scroop Egerton, Earl of Bridgwater.  
Thomas Grey, Earl of Stamford.  
William Fleetwood, Bishop of St. Asaph.  
Charles Montagu, Lord Halifax.  
Richard Lumley, Earl of Scarborough.

John Sommers, Lord Sommers.  
 Lewis Watson, Lord Rockingham.  
 Hugh Cholmondeley, Earl Cholmondeley.  
 Edward Russel, Earl of Orford.  
 Gilbert Burnet, Bishop of Salisbury.  
 Sidney Godolphin, Earl Godolphin.  
 Henry Herbert, Lord Herbert of Chirbury.  
 John Hough, Bishop of Lichfield and Coventry.  
 John Moore, Bishop of Ely.  
 Thomas Pelham, Lord Pelham.  
 John Evans, Bishop of Bangor.  
 Maurice Thompson, Lord Haversham.  
 John Hervey, Lord Hervey.  
 Charles Trimnell, Bishop of Norwich.  
 William Cowper, Lord Cowper.  
 Thomas Wharton, Earl Wharton.

## CLXXIV.

DECEMBER 8, 1711.

The Houses of Parliament were prorogued on the 12th of June (and by successive prorogations) to the 7th of December. The Queen's speech commenced by informing the Houses that she was engaged in negotiations for peace, that the States General acquiesced, that her chief concern was to secure the succession to the House of Hanover, and thereby to continue the Protestant religion, and the laws and liberties, that the interests of the nation in trade and commerce might be improved and enlarged, that she has strengthened her alliances, and that the best way for making the Treaty effectual was by making early provision for the campaign. In the motion for the address, it was moved and carried without a division that the following words be inserted, that the Committee appointed to prepare the address 'should represent to her Majesty as the humble opinion and advice of this House, that no peace can be safe or honourable to Great Britain or Europe, if Spain or the West Indies are to be allotted to the House of Bourbon.' On the intrigues of the Whigs with some of the dissatisfied Tories, see Stanhope's Reign of Queen Anne, chap. xiv; and also Swift's Journal to Stella. The above clause was inserted in the address and was carried on a division by 62 votes to 54, the Duke of Marlborough speaking for and supporting it. A similar clause moved in the House of Commons by Walpole was rejected by 232 to 106. The price which the Whigs paid for Nottingham's support on this occasion was the passage of the occasional Conformity Bill. The policy which the Ministry adopted in order to counteract the majority in the Lords was the creation of twelve new Peers, and to dismiss Marlborough from all his employments. This was done in the Gazette of the 31st of December.

The following protest was inserted on the passage of the clause in the address.

We dissent to the address, because the nature of it is changed,

by the insertion of the last clause, from that of an address of thanks; neither have we had anything Parliamentarily from the throne, or otherwise laid before us, whereon to ground such advice as is therein contained.

And we look upon it as an encroachment on the royal prerogative, in so hasty a manner to declare our opinions, and on no better grounds, in a thing so essentially belonging to the Crown as making of peace and war.

George Fitzroy, Duke of Northumberland.  
 Henry Somerset, Duke of Beaufort.  
 William North, Lord North and Grey.  
 Edward Hyde, Earl of Clarendon.  
 William Hatton, Viscount Hatton.  
 Thomas Lennard, Earl of Sussex.  
 John Robinson, Bishop of Bristol (Lord Privy Seal).  
 William Paston, Earl of Yarmouth.  
 Peregrine Osborne, Lord Osborne.  
 Basil Feilding, Earl of Denbigh.  
 Nicholas Leke, Earl of Scarsdale.  
 Other Windsor, Earl of Plymouth.  
 Thomas Tufton, Earl of Thanet.  
 George Verney, Lord Willoughby de Broke.  
 Philip Bisce, Bishop of St. David's.  
 George Brudenell, Earl of Cardigan.  
 Thomas Manningham, Bishop of Chichester.  
 John West, Lord Delawarr.  
 Henry Bowes Howard, Earl of Berkshire.  
 William Stawell, Lord Stawell.

## CLXXV.

DECEMBER 20, 1711.

The Duke of Hamilton, a Scotch Peer, was created Duke of Brandon by a patent dated the 11th of September, 1711. On the 12th of December notice is taken that the name of Duke of Hamilton and Brandon is contained in a list of the nobility delivered by Garter King-at-Arms, and it is ordered that the Privy Seal Bill of the patent be laid before the House on the 20th. When the Bill was produced, it was proposed to put the following question to the Judges, 'Whether the Queen be disabled by the Act of Union to grant a peerage of Great Britain with all the privileges depending thereon, to any person who was a Peer of Scotland before the Union,' and passed in the negative. Then the following question was put and affirmed by 57 to 52, 'that no patent of honour granted to any Peer of Great Britain, who was a Peer of Scotland at the time of the Union, can entitle such Peer to sit and vote in Parliament, or to sit upon the trials of Peers.' The Duke of Hamilton fought a duel with Lord Mohun on the 15th of November, 1712, and both were killed.—See

Swift's Journal. The patent of the Duke of Dover, to which allusion is made, was dated the 26th of May, 1708. The Duke of Dover was now dead. The allusion to the Marquis of Lothian means that in the first election of Scotch Peers after the Union Lord Lothian was returned by a majority over the Marquis of Annandale; but in consequence of a resolution of the 21st of January, 1709, to the effect that no Peer of Scotland created a Peer of Great Britain after the Union could vote for the election of the sixteen Peers, certain votes were struck off Lord Lothian's majority—notably that of the Duke of Queensberry (and Dover)—the consequence of which was that he was displaced by Lord Annandale. The disability of the Scotch Peers was continued till 1782, when the Judges unanimously decided that no such disability was created by the Act of Union. Thereupon the Lords reversed their decision on the 8th of June, 1782.

The following protest was inserted.

1st, Because, as we apprehend, by this resolution, the prerogative of the Crown in granting patents of honour, with all privileges depending thereon, to the Peers of Great Britain, who were Peers of Scotland at the time of the Union, as well as the right of the Duke of Brandon, to sit and vote in Parliament, are taken away; and this prerogative of the Crown, and right of the Duke, depending upon the construction of an Act of Parliament, though counsel, by order of the House, were heard at the Bar, and all the Judges were ordered to attend at the same time, yet the opinion of the Judges was not permitted to be asked touching the construction of the said Act of Parliament.

2ndly, Because the prerogative of the Crown, as we conceive, in granting patents of honour, with the privileges depending thereon, ought not, on the construction of any Act of Parliament, to be taken away; unless there be plain and express words to that purpose in the said Act; and, we conceive, there are no such plain and express words for that purpose in the Act of Union.

3rdly, Because, by this resolution, all the Peers of Great Britain, who were Peers of Scotland at the time of the Union, are supposed to be incapable of receiving any patent of honour from the Crown, by virtue whereof they may be entitled to the privileges of sitting and voting in Parliament, and sitting on the trial of Peers; which, we conceive, is repugnant to the fourth article of the Act of Union, which declares the privileges and advantages which do or may belong to the subjects of either kingdom, except where it is otherwise expressly agreed in those articles, in which, we apprehend, there is no such provision.

4thly, Because the Duke of Queensbury, in all respects in the same case as the Duke of Hamilton, was introduced, sat and voted in this House in matters of the highest importance, in two several Parliaments, as Duke of Dover, by virtue of a patent passed since the Union; and in consequence of such sitting and voting, his vote in the election of Peers of Scotland was rejected; and as a further consequence thereof the Marquis of Lothian was removed from his seat in this House, which he had an undeniably title to, if the Duke of Queensbury's patent, as Duke of Dover, had not given him a title to sit and vote in this House.

5thly, Because, by this resolution, the Peers of Scotland are reduced to a worse condition, in some respects, than the meanest or most criminal of subjects.

6thly, Because, we conceive, this resolution may be construed to be a violation of the Treaty between the two nations.

Robert Harley, Earl of Oxford and Mortimer.  
 James Butler, Duke of Ormond.  
 Charles Finch, Earl of Winchilsea.  
 Simon Harcourt, Lord Harcourt (Lord Keeper).  
 Richard Savage, Earl Rivers.  
 Walter Stuart, Lord Blantyre.  
 John Poulett, Earl Poulett.  
 Archibald Campbell, Earl of Ilay.  
 John Erskine, Earl of Mar.  
 Archibald Primrose, Earl of Rosebery.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Hugh Campbell, Earl of Loudoun.  
 Alexander Home, Earl of Home.  
 George Hamilton, Earl of Orkney.  
 John Elphinstone, Lord Balmerino.  
 Peregrine Osborne, Lord Osborne.  
 William Ferdinand Carey, Lord Hunsdon.  
 William Livingston, Viscount Kilsyth.  
 Edward Hyde, Earl of Clarendon.

## CLXXVI.

MAY 28, 1712.

The Duke of Ormond had succeeded the Duke of Marlborough as General in Flanders, and had joined Prince Eugene at Tournay. The allied forces amounted to 120,000 men, a superior force to that under the command of Marshal Villars, and it was the project of Eugene to revive Marlborough's plans, 'to invest Le Quesnoy and Landrecies,

overwhelm the French army, and march onwards into the heart of France.' Ormond agreed to this, and matters were ready for commencing the offensive. In the meantime Louis XIV had made certain proposals to the English Government through Torcy, which induced Ministers to direct instructions to the Duke of Ormond to suspend hostilities. These instructions were subsequently called in the debate of the 28th of May 'The restraining orders.' When information reached England, the Whigs and the Nottingham Tories lost no time in calling the attention of the Houses to the fact. A motion was made in the Commons by Mr. Pulteney, substantially the same as the question proposed in the Lords, but was rejected by 203 to 73. The question put in the Lords by Halifax was, 'That an humble address be presented to her Majesty, that her Majesty will be pleased to send orders to her General to act in concert with her allies offensively against France, in order to obtain a safe and honourable peace.' Lord Oxford assured the House that instructions had been given to Ormond to undertake a siege if needed, but not to risk a battle, an evasion which was severely commented on by Marlborough. In a second speech, Oxford assured the House that a separate peace was not thought of. The House therefore rejected the motion by 68 to 40. In the course of the debate Earl Poulett grossly insulted the Duke of Marlborough, who took no notice at first of the affront, though he subsequently sent Lord Mohun to Lord Poulett with an invitation 'to take the air in the country.' When Lord Poulett returned home, his wife observed that he was somewhat disconcerted, discovered the facts, and had him put under arrest by order of Lord Dartmouth.

The following protest was inserted in the Journal, but was expunged by order of the 13th of June. It had, however, been circulated widely over the country, and had been distributed abroad in French and other languages. At the same time with the order for expunging the protest the House appointed a Committee 'who should enquire who is the printer and publisher of the said reasons.'

*We conceive such an order as was proposed in the question, to be absolutely necessary, because we are convinced that the Duke of Ormond lay under some order of restraint from acting offensively, not only from the accounts which were public both here and in Holland, of his declaring it to Prince Eugene and to the deputies of the States, at their late consultation, when both Prince Eugene and those deputies earnestly pressed him to join in attacking the French army, which was then known to be much inferior to that of the allies, both in the number and condition of their troops, but also that nothing of this whole matter was denied by those Lords, who had the means of knowing these facts, as undoubtedly would have been without scruple, had not the said facts been true; since no scruple was made of acquainting the House with a subsequent order very lately sent to the Duke of Ormond, allowing him to join*

*in a siege : which was a further evidence that he had before some order of restraint, for otherwise this last order would be unnecessary and absurd ; it being a general, constant, and standing instruction to every Commander in Chief, by land or sea, to do his utmost endeavour to annoy the enemy. And it is manifest by this last order, that even in the opinion of the Ministers, it was expedient to take off this restraint, to some degree ; and the leaving the Duke of Ormond still under a restraint from giving battle to the French, seemed most unaccountable, and inconsistent with the liberty indulged to him of joining in a siege, and rendered it altogether useless : for no place, when taken, could be of such advantage to the allies as Cambray, which opens a free passage for our army into the heart of France ; and it was impossible to besiege that place, without dislodging the French from their encampment ; and this was also impossible, if the French would keep their ground. Other attempts seemed to be of little use, but might serve to give the French time, which they did not want skill to improve.*

*2ndly, That we conceive it would be derogatory to her Majesty's honour, to public faith, and that justice which was due to her Majesty's allies ; and that it was a sort of imposing upon our allies a cessation of arms, without their consent, and in the most prejudicial manner, because they were not so much as acquainted with it, and so might have been led into great difficulties ; besides that, it frustrated all essential advantages against the common enemy, which might be of fatal consequence to this nation and all Europe.*

*3rdly, Because it was acknowledged that a General Peace was not concluded, as indeed it was very unlikely it should be, there having been no answer in writing given by the French to the specific demands of the allies, though the same were delivered to the French three months ago : and it was further declared, there was no Separate Peace, nay, that such a Peace would be foolish, knavish, and villainous. And, therefore, while we were in war, and having no security of a Peace, we conceive that such an order of restraint was a plain neglect of all those happy opportunities which Providence might, and lately did put into our hands, of subduing our enemy, and forcing him to a just and honourable Peace. And surely it was imprudent and dangerous to rely on the promises of France, which were so far from being any security that even a Peace would not be safe, in their opinion, unless it be such as gave so full satisfaction*

*to the allies, that they should be willing to join with us in a mutual Guaranty of it.*

*That her Majesty having with great wisdom declared to this Parliament, That the best means of obtaining a good Peace was to make early preparations for War, and a vigorous prosecution of it: and since the Parliament had with great duty and deference to her Majesty, and a just zeal for the interests of their country, and of Europe, given very great supplies for that purpose; we conceive that such an order of restraint, being very different from that declaration of her Majesty, must be the effect of very ill advice; by which the Parliament's good intention would be defeated, and all those heavy loads of taxes, which they have for so good purposes cheerfully given, rendered fruitless and unnecessary; and might, in conclusion, after having thus trifled away our wealth and time, bring us into the necessity of accepting such a Peace, as it should please an insolent and domineering enemy to give us.*

William Cavendish, Duke of Devonshire.  
John Manners, Duke of Rutland.  
Charles Paulet, Duke of Bolton.  
Charles Howard, Earl of Carlisle.  
James Stanley, Earl of Derby.  
Thomas Wharton, Earl Wharton.  
John Montagu, Duke of Montagu.  
Edward Russel, Earl of Orford.  
Sydney Godolphin, Earl Godolphin.  
Gilbert Burnet, Bishop of Salisbury.  
Scroop Egerton, Earl of Bridgewater.  
Richard Lumley, Earl of Scarborough.  
John Sommers, Lord Sommers.  
Daniel Finch, Earl of Nottingham.  
William Talbot, Bishop of Oxford.  
Lewis Watson, Lord Rockingham.  
Charles Townshend, Viscount Townshend.  
Charles Mohun, Lord Mohun.  
William Fleetwood, Bishop of St. Asaph.  
Maurice Thompson, Lord Haversham.  
John Evans, Bishop of Bangor.  
Evelyn Pierrepont, Marquis of Dorchester.  
John Churchill, Duke of Marlborough.  
Charles Montagu, Lord Halifax.  
William Cowper, Lord Cowper.  
Henry Herbert, Lord Herbert of Chirbury.  
Richard Newport, Earl of Bradford.

## CLXXVII.

JUNE 7, 1712.

On the 6th of June the Queen delivered a speech in the Lords, in which the heads of the peace were given, and which may be found in the Lords' Journals of that day. In the Commons no debate was permitted, and the address of thanks was voted by acclamation; but the Speech was discussed in the Lords with some acerbity. The reply to the address contained a sentence assuring the Queen that the House did 'entirely rely on her wisdom to finish this great and good work,' and these words were excepted to. A motion was then made to add these words to the address, 'and in order to that, that her Majesty would take such measures in concert with her allies, as might induce them to join with her Majesty in a mutual guaranty.' This clause was rejected by 81 to 36. It is said that the proxies of the minority were not called for, and that several Lords were unwilling to vote against the Court. The protest inserted in the Journals was ordered to be expunged on the 13th of June. It had however been printed in the meanwhile. There are two editions of it in Bodley Pamphlets (304) 1712 v. On the same day (the 13th of June) the Lords appointed a Committee of 19 (one of whom was Nottingham) to search after the printer and publisher of the protest entered on the 28th of May. The Committee reported on the 19th of June that they could not make the discovery, and they pray that a proclamation should issue offering a reward for the discovery of the culprits. On the 24th of June £50 was offered for the names of the printers, and £100 for those who directed the printing. On the feelings entertained by the Dutch and Prince Eugene, see Lord Stanhope's History, chapter xv.

*We think it necessary to have the security proposed of a general Guaranty, and the rather, because we conceive the terms of peace that are offered, have proceeded from a separate negotiation, carried on by the Ministers with France, without any communication thereof to the principal allies, particularly the States' General, as they say in the letter to her Majesty (whose interest her Majesty was pleased to declare to this Parliament, she looked upon as inseparable from her own), and we conceive this negotiation to be contrary to those orders which her Majesty declared to this House, in answer to their Address, that she had given to her plenipotentiaries at Utrecht, to concert with those of her allies; and the resolution expressed in her Message, January the 17th, of a strict union, in which she proposed to join with them, in order to obtain a good peace, and to guaranty and support the same, as she had before declared in her Speech at the opening of this Session; that she would unite with them in the strictest engagements for continuing the alliance, in*

*order to render the General Peace secure and lasting ; and contrary to the eighth Article of the Grand Alliance, which expressly obliges all the allies not to treat, unless jointly, and with the common advice of the other parties.*

*And we conceive that the refusal of these words proposed to be added, may be looked upon by the allies, as if this House approved this method of transacting with France, which may seem to them to tend to a Separate Peace, of which her Majesty has declared her dislike, and which was acknowledged in this House to be foolish and knavish, and would be of pernicious consequence to this Kingdom, by preventing that Guaranty of Peace by the allies, which is so absolutely necessary for their mutual security, and leave us exposed to the power of France, there being little reason to expect their future help, after such a gross breach of trust.*

*And we further conceive, that such a separate proceeding may create in the allies so great a distrust, as may tempt them to take the like measures, and to give the French opportunity to break that union, which has been hitherto so useful to us, and formidable to them ; any appearance whereof must encourage France, either to delay the conclusion of a peace, or to impose upon the allies in the further progress of the treaty.*

*A perfect union among the allies seems to us to be more necessary in the present case, because the foundation upon which all the offers of France, relating to Great Britain, as well as to the allies, are built, viz. a renunciation of the Duke of Anjou to that kingdom, is, in our opinion, so fallacious, that no reasonable man, much less whole nations, can ever look upon it as any security. Experience may sufficiently convince us, how little we ought to rely upon the renunciation of the House of Bourbon, and though the present Duke of Anjou should happen to think himself bound by his own act, which his grandfather did not, yet will his descendants be at liberty to say, that no act of his could deprive them of their birth-right, and especially when it is such a right, as, in the opinion of all Frenchmen, ought inviolably to be maintained, by the fundamental constitution of the kingdom of France.*

*And we humbly think it unsafe to depend upon this principal part of the treaty's executing itself, by supposing it will be the interest of France to support it, since, on the contrary, it is manifest by the French endeavours, ever since the Pyrenean Treaty, to unite the*

*monarchies of France and Spain, they look upon that Union to be their greatest interest, and the most effectual means of establishing the universal monarchy in the House of Bourbon.*

*And if it were reasonable to imagine, that the two Crowns of France and Spain should remain in distinct branches of the House of Bourbon; yet this is contrary to the Grand Alliance itself, which recites the usurpation of the Spanish monarchy by the French King, for the Duke of Anjou, as the principal cause of this war.*

*As to Port Mahon, Gibraltar, the Assiento, and the other advantages to Britain proposed by France (besides that they are all precarious, and in the power of France and Spain to take from us when they please, considering the situation of those kingdoms, and the vast wealth and strength which will be left to them), we conceive it impossible for any man to look on those as a compensation to Britain in any degree, for the leaving Spain and the Indies in the possession of the House of Bourbon; which, besides other manifestly fatal consequences, must be extremely prejudicial to our woollen manufacture, if it does not entirely ruin it.*

*As to the demolition of Dunkirk, though we own it will be a great safety to our home-trade, yet we have reason to apprehend, by what was said in the debate, that it is not yet agreed to be demolished, without any equivalent for it to the French King's satisfaction.*

*And in all the particulars relating to the allies, though they are not perfectly adjusted, yet by what does appear concerning them, the allies are likely to be left in such a state of insecurity, as is absolutely inconsistent with our own safety.*

*The Rhine is proposed for a Barrier of the Empire, which leaves Strasburgh and Hunninghen in the hands of the French; the former of which has always been looked upon as the key of the Empire.*

*The proposals of France relating to the Barrier for the States' General, not only deprive them of all the places taken since the year 1709, but also of two or three places more, included in the demand made by the States in that year, which will render their Barrier wholly insufficient, and consequently very much weaken the security of Britain.*

*Portugal seems to be wholly abandoned to the power of Spain, notwithstanding the great advantages we have received during this war by our trade with that kingdom, which might still be extremely beneficial to us.*

*Upon the whole, there is so very little and inconsiderable a difference between these offers of France, and those made at Utrecht, on the 11th of February, N. S. and signed Huxelles, (as appear to us upon our comparing them together) that both seem to be the effect of a secret and particular negotiation with France; and this House having unanimously concurred, in expressing to her Majesty their utmost resentment at those terms offered to her Majesty and her allies, by the plenipotentiaries of France; and her Majesty having graciously accepted that our Address, and rewarded that duty and zeal with her hearty thanks, we cannot, in respect to her Majesty, or justice to our country, retract that opinion, nor think the terms now good for us or the allies, or give any seeming approbation of them, which then were received by this House, and all the allies, with scorn and detestation.*

*For these reasons, we are of opinion, that the offers of France are fallacious and ensnaring, no ways proportioned to the advantages which her Majesty (from the great successes which it has pleased God to bless her and her allies, during the whole course of this war) might justly expect for her own kingdoms, and for them, very insufficient for preserving a balance of power in Europe, for the future security of her Majesty and her allies, though they should be never so exactly performed; and yet, even such as they are, there is no effectual security offered for the performance of them, which makes it absolutely necessary, as we conceive, that such measures should be taken in concert with the allies, as may induce them to join with her Majesty in a mutual guaranty.*

Charles Seymour, Duke of Somerset.  
William Fleetwood, Bishop of St. Asaph.  
Sidney Godolphin, Earl Godolphin.  
Charles Paulet, Duke of Bolton.  
Thomas Wharton, Earl Wharton.  
Richard Lumley, Earl of Scarborough.  
Scroop Egerton, Earl of Bridgewater.  
William Cavendish, Duke of Devonshire.  
John Churchill, Duke of Marlborough.  
Charles Mohun, Lord Mohun.  
James Berkeley, Earl of Berkeley.  
John Evans, Bishop of Bangor.  
William Talbot, Bishop of Oxford.  
Evelyn Pierrepont, Marquis of Dorchester.  
Charles Townshend, Viscount Townshend.  
William Cowper, Lord Cowper.

John Moore, Bishop of **Ely**.  
 John Manners, Duke of **Rutland**.  
 John Montagu, Duke of **Montagu**.  
 Maurice Thompson, Lord **Haversham**.  
 Daniel Finch, Earl of **Nottingham**.  
 Henry Clinton, Earl of **Lincoln**.  
 Henry Howard, Earl of **Suffolk**.  
 Charles Howard, Earl of **Carlisle**.  
 Richard Newport, Earl of **Bradford**.  
 John Hervey, Lord **Hervey**.

## CLXXVIII.

JUNE 8, 1713.

On the 20th of May the Commons made certain amendments in the Malt Tax, in a Committee of the whole House, and after debate and great resistance on the part of the Scotch Members, it was carried by one vote that the Malt Tax should be laid equally on all parts of Great Britain (the tax was sixpence the bushel). On several grounds this imposition was resisted by the Scotch Members, the principal being that Scotch barley was very inferior to English, and that the tax was thereupon really a double one in Scotland; and that the tax was opposed to the Articles of the Union. After the extension of the tax was carried in the House of Commons the Scotch Members sent a deputation to the Queen, and not being satisfied with the reception given to their complaint, move in the Lords on the 1st of June by Lord Findlater for leave to bring in a Bill to dissolve the Union. The Scotch grievances were declared to be four:—1. The extinction of the Scotch Privy Council; 2. The extension of the English law of Treason to Scotland; 3. The resolution of the Peers in the Duke of Hamilton's case; 4. The present imposition of the Malt Tax. The motion was rejected by four votes, fifty-four Peers voted on each side, while seventeen proxies were for the negative, and thirteen for the affirmative. The Malt Bill was opposed on going into Committee, but was carried at this stage by 85 votes to 83, two Scotch Peers being absent without leaving their proxies. On the motion that the Bill do now pass, a division was taken, and the Bill was carried by 64 votes to 56.

The following protest was inserted in the Journals.

1st, Because, we apprehend, that the charging Scotland with this Malt Tax will be a violation of the fourteenth Article of the Union, by which it is expressly provided, that Scotland shall not be charged with any Malt Tax during this war: and it was not denied; for indeed it is undeniable, that peace with Spain is not yet concluded, and by construction of law and usage of Parliament, this Bill is to be reckoned as a grant to the Crown, and a charge upon the people from the first day of this Session, at which time even the peace with France was not made.

2ndly, Because a great part of this Malt Tax is for the satisfying and making up the deficiency of the Malt Tax in the year one thousand seven hundred and eleven, from which Scotland being entirely free, we conceive it unjust, even though the peace were concluded, to make that part of the United Kingdom pay any part of that tax, which was expressly given (as appears by the preamble) for this present war.

3rdly, Because it is by the foresaid fourteenth Article expressly provided, ‘that due consideration shall be had of the circumstances of Scotland, when any imposition or tax is laid on it;’ and we are fully persuaded, that it is impossible for Scotland to bear so heavy a tax, by which it will be liable to pay vastly more when the peace shall be concluded than it did during the war; whereas England has its burthens greatly diminished.

Charles Seymour, Duke of **Somerset**.  
 Charles Spencer, Earl of **Sunderland**.  
 Richard Lowther, Viscount **Lonsdale**.  
 John Erskine, Earl of **Mar**.  
 James Livingston, Earl of **Linlithgow**.  
 James Ogilvy, Earl of **Findlater**.  
 Alexander Seton, Earl of **Eglintoun**.  
 Thomas Hay, Earl of **Kinnoull**.  
 David Carnegie, Earl of **Northesk**.  
 Alexander Home, Earl of **Home**.  
 William Stuart, Lord **Blantyre**.  
 George Hamilton, Earl of **Orkney**.  
 Hugh Campbell, Earl of **Loudoun**.  
 Richard Lumley, Earl of **Scarborough**.  
 Archibald Campbell, Earl of **Ilay**.  
 John Campbell, Earl of **Greenwich** (Duke of Argyll).  
 Archibald Primrose, Earl of **Rosebery**.  
 William Livingston, Viscount **Kilsyth**.  
 John Elphinstone, Lord **Balmerino**.

### CLXXIX.

JUNE 15, 1714.

The Act to prevent the growth of schism, and for the further security of the Church of England as by law established, was originated in the Commons, and brought into the Lords’ House on the 2nd of June. A petition of the Dissenters against it was rejected, but a clause relieving foreign Protestant Churches from its provisions was inserted. On the 15th of June it was carried by 77 to 72. It received the royal assent by commission on the 25th of June. The Act is 12 Anne, Stat. II, chap. vii,

and it was repealed by 5 Geo. I, chap. iv. The Bill was supported by Lords Bolingbroke, Anglesey, North and Grey, and opposed by Lords Cowper, Wharton, Halifax, Townshend, and Nottingham. The Act was made to extend to Ireland, and the families of noblemen were exempt from its provisions.

The following protest was entered on the Journals.

1st, We cannot apprehend (as the Bill recites) that great danger may ensue from the dissenters to the Church and State, because,

(1) By law, no dissenter is capable of any station, which can be supposed to render him dangerous.

(2) And since the several sects of dissenters differ from each other as much as they do from the Established Church, they can never form of themselves a national church, nor have they any temptation to set up any one sect among them: for in that case, all that the other sects can expect is only a toleration, which they already enjoy by the indulgence of the State; and therefore it is their interest to support the Established Church against any other sect that would attempt to destroy it.

2ndly, If nevertheless the dissenters were dangerous, severity is not so proper and effectual a method to reduce them to the Church, as a charitable indulgence; as is manifest by experience, there having been more dissenters reconciled to the Church since the Act of Toleration, than in all the time from the Act of Uniformity to the time of the said Act of Toleration, and there is scarce one considerable family in England in communion with the dissenters: severity may make men hypocrites, but not converts.

3rdly, If severity could be supposed ever to be of use, yet this is not a proper time for it, while we are threatened with much greater dangers to our Church and Nation, against which the Protestant dissenters have joined, and are still willing to join with us in our defence; and therefore we should not drive them from us by enforcing the laws against them, in a matter which, of all others, must most sensibly grieve them, viz. the education of their children, which reduces them to the necessity either of breeding them in a way which they do not approve, or leaving them without instruction.

4thly, This must be more grievous to the dissenters, because it was little expected from the members of the Established Church, after so favourable an indulgence to them, as the Act of Toleration, and the repeated declarations and professions from the throne, and former Parliaments, against all persecution, which is the peculiar

badge of the Roman Church, which avows and practises this doctrine; and yet this has not been retaliated even upon papists, for all the laws made against them have been the effect and just punishment of the treasons from time to time committed against the State. But it is not pretended, that this Bill is designed as a punishment of any crime which the Protestant dissenters have been guilty of against the civil government, or that they are disaffected to the Protestant succession, as by law established: for in this their zeal is very conspicuous.

5thly, In all the instances of making laws, or of a rigid execution of the laws against dissenters, it is very remarkable that the design was to weaken the Church, and to drive them into one common interest with the papists, and to join them in measures tending to the destruction of it: these were the measures suggested by popish counsels, to prepare them for the two successive declarations in the time of King Charles II, and the following one issued by King James II, to ruin all our civil and religious rights; and we cannot think that the arts and contrivances of the papists to subvert our Church, are proper means to preserve it, especially at a time when we are in more danger of popery than ever, by the designs of the pretender, supported by the mighty power of the French King, who is engaged to extirpate our religion, and by great numbers in this Kingdom, who are professedly in his interests.

6thly, But if the dissenters should not be provoked by this severity to concur in the destruction of their country, and the Protestant religion, yet we may justly fear they may be driven, by this Bill, from England, to the great prejudice of our manufactures: for as we gained them by the persecutions abroad, so we may lose them by the like proceedings at home.

Lastly, The miseries we apprehend here are greatly enhanced by extending this Bill to Ireland, where the consequences of it may be fatal; for since the number of papists in that kingdom far exceeds all the Protestants of all denominations together, and that the dissenters are to be treated as enemies, or at least as persons dangerous to that Church and State, who have always, in all times, joined, and would still join, with the members of that Church in their common defence against the common enemy of their religion; and since the army there is much reduced, the Protestants, thus unnecessarily divided, seem to us to be exposed to the danger of

another massacre, and the Protestant religion in danger of being extirpated.

And we may further fear, that the Scotch in Britain, whose national church is Presbyterian, will not so heartily and so zealously join with us in our defence, when they see those of the same nation, the same blood, and the same religion, so hardly treated by us.

And this will still be more grievous to the Protestant dissenters in Ireland, because, whilst the popish priests are registered, and so indulged by law, as that they exercise their religion without molestation, the dissenters are so far from enjoying the like toleration, that the laws are, by this Bill, enforced against them.

Arthur Herbert, Earl of Torrington.  
Evelyn Pierrepont, Marquis of Dorchester.  
Charles Seymour, Duke of Somerset.  
Charles Paulet, Duke of Bolton.  
Lionel Cranfield Sackville, Earl of Dorset and Middlesex.  
Thomas Wharton, Earl Wharton.  
Charles Fitzroy, Duke of Grafton.  
William Cavendish, Duke of Devonshire.  
Charles Townshend, Viscount Townshend.  
Charles Howard, Earl of Carlisle.  
Richard Lumley, Earl of Scarborough.  
Charles Spencer, Earl of Sunderland.  
James Stanley, Earl of Derby.  
Charles Cornwallis, Lord Cornwallis.  
Henry Clinton, Earl of Lincoln.  
Edward Russel, Earl of Orford.  
Daniel Finch, Earl of Nottingham.  
Charles Bodvile Robartes, Earl of Radnor.  
John Sommers, Lord Sommers.  
Lewis Watson, Lord Rockingham.  
Maurice Thompson, Lord Haversham.  
William Wake, Bishop of Lincoln.  
John Moore, Bishop of Ely.  
John Evans, Bishop of Bangor.  
Thomas Foley, Lord Foley.  
William Fleetwood, Bishop of St. Asaph.  
John Tyler, Bishop of Llandaff.  
Meinhardt Schonburg, Duke of Schonburg and Leinster.  
John Montagu, Duke of Montagu.  
Talbot Yelverton, Viscount de Longueville.  
Charles Montagu, Lord Halifax.  
William Cowper, Lord Cowper.  
John Campbell, Earl of Greenwich (Duke of Argyll).

## CLXXX.

JULY 8, 1714.

The Queen's Speech of the 6th of June, 1712, contained the following clause : 'The part which we have borne in the prosecution of this war entitling us to some distinction in the terms of peace, I have insisted and obtained that the Assiento, or contract for furnishing the Spanish West Indies with Negroes, shall be made with us for the term of thirty years, in the same manner as it has been enjoyed by the French for ten years past.' By the terms of the treaty with Spain negotiated at Madrid, a quarter part of the Assiento contract was reserved for the Queen, the trade being transferred to the South Sea Company. The Company were however dissatisfied with the results of this trade, and declared that they could not carry it on without loss. The House of Lords therefore took the matter up on the 27th of June, called on the South Sea Company for information on the subject, and ordered the production of papers. The investigation was intended to pave the way for a censure on Bolingbroke and his agent Moore, who was a director of the South Sea Company; that corporation having voted that Moore was engaged in a clandestine trade with the district comprised under the Assiento, and strong suspicions being entertained that the profit of this trade was assigned to Lord Bolingbroke and Lady Masham. An attempt to advise the Queen that she should transfer to the South Sea Company the share which had been reserved to her was lost, and also the following proposition : 'That an humble representation be made to her Majesty, that the benefit of the *assiento* contract, and of the licences, have been greatly obstructed by unwarrantable endeavours to gain private advantages to particular persons.'

On this, the motion being lost by 58 to 40 votes, the following protest was entered. Anne died on the 1st of August following.

1st, Because, as we humbly conceive, the great delays in this negotiation, which lasted about twelve months, could not proceed from any other motive, since it would have been infinitely more advantageous to the public to have had all matters settled immediately.

2ndly, The several turns this affair took, the several methods used to obtain greater advantages to the assignees, seemed to us plainly to shew, that the interest of particular persons was the chief aim in this transaction.

In the first draught of this assignment from the Queen of the *assiento* contract, the Queen was made co-partner with the Company. But when there was found insuperable difficulty in this, it was offered 'that the Queen should assign to particular

persons, who should become members with the Company, pay in their proportion of the joint-stock, and be subject to all other rules of the contract.'

After this had been long transacting, the scene changed, and the Company were now told, 'that the Queen expected her assignees should be in all respects on the same foot as she herself would have been, and did not think it hard for the Company to make all the advances.' These new hardships gave a great alarm to the Company; and in a general court there was great contention, whether the *assiento* should be accepted or not, and with difficulty it was determined to receive it, even with conditions that did, in some measure, alleviate these new impositions.

Things being come to this pass, a noble Lord condescended to treat with some of the directors about the proportion of money that the assignees should advance, and to promise them great benefits, if they would be easy to the assignees in those conditions. On the Company's compliance with this proposal, a new method was found of settling this in Chancery; but the counsel for the Company having, in the answer of the assignees, inserted words that were thought too restrictive, and too binding on the assignees to secure their payments to the Company, great disputes and warmth arose on that occasion, and the writings were stopped several weeks before this could be adjusted. Afterwards the assignees named in the schedules, appearing to be only trustees of the Crown, who are afterwards to make a declaration of trust, and to assign over to other persons, the counsel for the Company gave their opinion, 'that it was not safe for the Company to accept the *assiento* upon those terms, it being liable to all the objections that were made to the proposition a year before.'

3rdly, It having been proposed by the Company, when they foresaw great delays in settling the assignment of the *assiento*, 'that the licenses for the two ships should be dispatched,' which were to take place even before the peace, that the cargo they had provided might have been sent away to be there at the Fair, when the galleons, which were then sailing, should arrive: this great advantage to the public was refused them, for no better reason, as we conceive, than that the assignees of the Crown might not then have had their share in the advantage. By this means the Company's ships have lain long at demurrage, and they have paid

interest for the money advanced, while the cargo continues useless and in a perishing condition.

Two seasons of sailing are past, and the great advantage of coming early to a market, after a long war, is entirely lost to the public.

Lastly, Several of the Court of Directors declared, upon oath, at our Bar, that Mr. Moore, who is known to have been in the secret, and to be in the utmost confidence with those who have transacted this whole matter, advised them to give a sum of money to the assignees to remove the obstruction.

Charles Seymour, Duke of **Somerset**.  
 Charles Paulet, Duke of **Bolton**.  
 Charles Fitzroy, Duke of **Grafton**.  
 William Cavendish, Duke of **Devonshire**.  
 John Campbell, Earl of **Greenwich** (Duke of Argyll).  
 Charles Townshend, Viscount **Townshend**.  
 Henry Clinton, Earl of **Lincoln**.  
 Daniel Finch, Earl of **Nottingham**.  
 Richard Lumley, Earl of **Scarborough**.  
 James Berkeley, Earl of **Berkeley**.  
 Frederic Nassau de Zulestein, Earl of **Rochford**.  
 Thomas Wharton, Earl **Wharton**.  
 Charles Montagu, Lord **Halifax**.  
 Lewis Watson, Lord **Rockingham**.  
 Edward Russel, Earl of **Orford**.  
 William Cowper, Lord **Cowper**.  
 Heneage Finch, Lord **Guernsey**.  
 Richard Newport, Earl of **Bradford**.  
 Maurice Thompson, Lord **Haversham**.  
 Thomas Foley, Lord **Foley**.  
 Gilbert Burnet, Bishop of **Salisbury**.

### CLXXXI.

AUGUST 18, 1715.

On the 27th of March, 1715, Bolingbroke, who had up to that time declared that he should abide the risk in which the accession of George I, and the change of Ministry had put him, fled from England, and after a time accepted the office of Secretary of State from the Chevalier, together with the patent of an Earl. On the 4th of August, Walpole reported the articles of impeachment against Bolingbroke. As Bolingbroke had disappeared, an Act was brought into the House of Commons summoning him to render himself to justice by a certain day, on pain of attainder of high treason. At the same time a similar Bill was introduced to attaint the Duke of Ormond. Bolingbroke was restored in 1725 to his estates, but not to his honours. Ormond died in exile.

The following protest to the Act of Attainder was entered on the Journals.

1st, Because we cannot give our consent to the affirming, that the Lord to be attainted by this Bill is fled from justice, being known to have left England before he was impeached in Parliament; nor does it appear to us, that the Lord so impeached has had any summons to return, or legal notice, by proclamation or otherwise, of the charge brought up against him.

2ndly, Because no particular proofs have been laid before the House of any high treason, or other high crimes and misdemeanors, with which he stands charged; nor has any evidence been given to this House of his adhering to the King's enemies, or being concerned in any traitorous design since he left England.

3rdly, Because the time prescribed for his return is much shorter than what has been allowed to persons in like circumstances of supposed guilt, though of far meaner condition and character; nor do we know or believe, that there is any instance of any person whatsoever, who was out of the Kingdom at the time of his being impeached in Parliament, who has not had a longer day assigned for his return, before he was to stand and be adjudged attainted, or actually incur any other high pains and penalties inflicted by act of Parliament.

And we think such allowance of a longer day, in the case of attainders by Parliament, to be much more reasonable, as it is agreeable (not only to Parliamentary usage, but) to the methods of common law, in all cases of outlawry, whereby more months are allowed to the most notorious traitor (known to be fled from justice) for his coming in, before his outlawry can be recorded, than this Act allows weeks, to the Lord impeached, for his returning before his attainder takes place.

Francis Gastrell, Bishop of Chester.

Montague Bertie, Earl of Abingdon.

Nicholas Leke, Earl of Scarsdale.

Allen Bathurst, Lord Bathurst.

George Verney, Lord Willoughby de Broke.

James Compton, Lord Compton.

John Ashburnham, Lord Ashburnham.

Thomas Foley, Lord Foley.

Charles Butler, Lord Weston (Earl of Arran).

William Villiers, Earl of Jersey.

Samuel Masham, Lord Masham.

Thomas Wentworth, Earl of Strafford.  
 George Granville, Lord Lansdowne.  
 Edward Hyde, Earl of Clarendon.  
 Francis Atterbury, Bishop of Rochester.

## CLXXXII.

AUGUST 18, 1715.

The following protest was entered against the attainder of the Duke of Ormonde, a petition having been presented by his Duchess, begging that the date of surrender (the 10th of September) might be prolonged. Ormonde died in 1745.

For the reasons given against the Bill, intituled, ‘An Act for the attainder of Henry, Viscount Bolingbroke, of high treason, unless he shall render himself to justice, by a day certain therein mentioned.’

George Smallridge, Bishop of Bristol.  
 Nicholas Leke, Earl of Scarsdale.  
 Montague Bertie, Earl of Abingdon.  
 George Verney, Lord Willoughby de Broke.  
 Allen Bathurst, Lord Bathurst.  
 James Compton, Lord Compton.  
 Thomas Foley, Lord Foley.  
 John Ashburnham, Lord Ashburnham.  
 George Hooper, Bishop of Bath and Wells.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Francis Atterbury, Bishop of Rochester.  
 Samuel Masham, Lord Masham.  
 Francis Gastrell, Bishop of Chester.  
 George Granville, Lord Lansdowne.  
 Thomas Wentworth, Earl of Strafford.  
 Edward Hyde, Earl of Clarendon.

## CLXXXIII.

JANUARY 21, 1716.

A Bill was introduced into the Lords enabling the King under the circumstances of the rebellion, to suspend the Habeas Corpus Act. It does not appear to have passed into a law, though the third reading was carried against an amendment of Lord Harcourt, by 64 to 14.

The following protest was entered.

1st, Because some provisions, which, in former Bills of this nature, were thought necessary to prevent unjust imprisonment, are omitted in this.

2ndly, Because the manner of continuing the suspension, by reference only, deprived this House of the opportunity freely to debate the several parts of the Act so continued.

3rdly, Because by this Bill the liberty of the subject is in greater danger, than if the Act suspended were totally repealed.

4thly, Because no provision is made in this Act for restraining the extravagant execution of the power given to Ministers, who are, like other men, subject to passion and revenge, at whose will and pleasure the most dutiful and loyal subjects may be deprived of their liberty, and all conversation with their best friends and dearest relations; which may tend to alien from his Majesty their affections, the best security against invasions from abroad, or rebellion at home.

5thly, Because, though it may be necessary, in this time of danger, to continue the suspension of the said Act, with proper provisions, yet not for so long a time as is proposed by this Bill, while the Parliament is like to continue sitting.

6thly, Because the ancient rights and privileges of Parliament, particularly for preventing the imprisonment of members of both Houses, are not by this Act sufficiently provided for, which may intimidate the members from using freedom of speech in Parliament, so necessary for advising his Majesty, and for restraining the exorbitant power of evil Ministers.

Montague Bertie, Earl of Abingdon.

#### CLXXXIV.

APRIL 14, 1716.

The Septennial Bill was introduced into the House of Lords by the Duke of Devonshire on the 10th of April. It was read a second time on the 14th of April, and a proposal was made it should be committed; a long debate ensued, strangers being ordered to withdraw. In the debate Lords Abingdon, Poulet, Trevor, Ferrers, Aylesford, Peterborough, Nottingham, and Anglesey, spoke against the Bill. The Dukes of Kingston, Argyll, and Newcastle, Lords Dorset, Cholmondeley, Ilay, and Cowper defended it. The Duke of Buckingham thought it unseasonable. It was put into Committee by 96 to 61, and passed the Lords on the 18th of April by 69 to 36, and was introduced into the Commons the next day. No petitions were presented to the Lords, probably because the Bill passed with so much rapidity, and strangers were excluded. Six boroughs petitioned against it in the Commons, immediately on its being introduced, when Lord Guernsey, eldest son of Lord Aylesford

moved its rejection on the first reading. It was attacked by Shippen, who spoke of it as one of 'the dictates of the Lords,' and others, some of the speeches being given at full length in the Parliamentary History. The committal of the Bill in the Commons was carried by 284 to 162. The list of those for and against the committal is published, and shows an extraordinary number of placemen among the advocates of the change. Four other petitions were presented against the Bill on the 25th of April from other boroughs. The Bill was carried on the 26th of April by 264 to 121. It received the royal assent on the 7th of May.

The preamble of the Bill (1 George, Stat. II, chapter 38) alleges as reasons for the enactment, the expenses of elections to members, 'more violent and lasting heats and animosities among the subjects of this realm, than were ever known before the clause was enacted, and the restlessness of a popish faction.'

The following protest was entered on the Journals on the occasion of the Bill going into Committee.

1st, Because, we conceive, that frequent and new Parliaments are required by the fundamental constitution of the Kingdom; and the practice thereof for many ages (which manifestly appears by our records) is a sufficient evidence and proof of this constitution.

2ndly, Because it is agreed, that the House of Commons must be chosen by the people, and when so chosen, they are truly the representatives of the people, which they cannot be so properly said to be, when continued for a longer time than that for which they were chosen; for after that time they are chosen by the Parliament, and not the people, who are thereby deprived of the only remedy which they have against those, who either do not understand, or through corruption, do wilfully betray the trust reposed in them; which remedy is, to choose better men in their places.

3rdly, Because the reasons given for this Bill, we conceive, were not sufficient to induce us to pass it, in subversion of so essential a part of our constitution.

i. For as to the argument, that this will encourage the princes and states of Europe to enter into alliances with us, we have not heard any one minister assert, that any one prince or state has asked, or so much as insinuated, that they wished such an alteration.

Nor is it reasonable to imagine it, for it cannot be expected, that any prince or state can rely upon a people to defend their liberties and interests, who shall be thought to have given up so great a part of their own; nor can it be prudent for them to wish such an experiment to be made, after the experience that Europe has had

of the great things this nation has done for them, under the constitution which is now to be altered by this Bill.

But on the other hand, they may be deterred from entering into measures with us, when they shall be informed, by the preamble of this Bill, ‘that the popish faction is so dangerous, as that it may be destructive to the peace and security of the Government,’ and may apprehend from this Bill, that the Government is so weak, as to want so extraordinary provision for its safety; which seems to imply, that the gentlemen of Britain are not to be trusted or relied upon, and that the good affections of the people are restrained to so small a number, as that of which the present House of Commons consists.

2. We conceive this Bill is so far from preventing expenses and corruptions, that it will rather increase them; for the longer a Parliament is to last, the more valuable to be purchased is a station in it, and the greater also is the danger of corrupting the members of it; for if ever there should be a Ministry who shall want a Parliament to screen them from the just resentment of the people, or from a discovery of their ill practices to the King, who cannot otherwise, or so truly, be informed of them, as by a free Parliament, it is so much the interest of such a Ministry to influence the elections (which by their authority, and the disposal of the public money, they, of all others, have the best means of doing) that it is to be feared they will be tempted, and not fail to make use of them; and even when the members are chosen, they have greater opportunity of inducing very many to comply with them, than they could have, if not only the Sessions of Parliament, but the Parliament itself, were reduced to the ancient and primitive constitution and practice of frequent and new Parliaments; for as a good Ministry will neither practise nor need corruption, so it cannot be any Lord’s intention to provide for the security of a bad one.

4thly, We conceive, that whatever reasons may induce the Lords to pass this Bill, to continue this Parliament for seven years, will be at least as strong, and may, by the conduct of the Ministry, be made much stronger, before the end of seven years, for continuing it still longer, and even to perpetuate it; which would be an express and absolute subversion of the third estate of the realm.

John Poulett, Earl Poulett.  
William Legge, Earl of Dartmouth.

Charles Seymour, Duke of **Somerset**.  
 James Cecil, Earl of **Salisbury**.  
 Robert Benson, Lord **Bingley**.  
 Charles Talbot, Duke of **Shrewsbury**.  
 Daniel Finch, Earl of **Nottingham**.  
 Thomas Wentworth, Earl of **Strafford**.  
 Arthur Annesley, Earl of **Anglesey**.  
 Henry Bowes Howard, Earl of **Berkshire**.  
 Thomas Windsor, Lord **Montjoy** (Viscount Windsor).  
 John Hervey, Earl of **Bristol**.  
 Thomas Trevor, Lord **Trevor**.  
 Henry O'Brien, Viscount **Tadcaster** (Earl of Thomond).  
 George Compton, Earl of **Northampton**.  
 Montague Bertie, Earl of **Abingdon**.  
 Francis North, Lord **Guilford**.  
 Heneage Finch, Earl of **Aylesford**.  
 Peregrine Hyde Osborne, Lord **Osborne**.  
 Francis Gastrell, Bishop of **Chester**.  
 Thomas Mansel, Lord **Mansel**.  
 John Leveson Gower, Lord **Gower**.  
 James Compton, Lord **Compton**.  
 Allen Bathurst, Lord **Bathurst**.  
 John Ashburnham, Lord **Ashburnham**.  
 Philip Bisse, Bishop of **Hereford**.  
 Charles Bruce, Lord Bruce of **Whorlton**.  
 Francis Atterbury, Bishop of **Rochester**.  
 Charles Butler, Lord **Weston** (Earl of Arran).  
 Thomas Foley, Lord **Foley**.  
 George Verney, Lord **Willoughby de Broke**.

## CLXXXV.

JUNE 22, 1716.

On the 13th of June a Bill was brought from the House of Commons, entitled, ‘A Bill for appointing commissioners to enquire of the estates of certain traitors and popish recusants, and of estates given to superstitious uses, in order to raise money out of them, severally for the use of the public,’ and was read on the 14th of June for the first time. The second reading was appointed after debate and putting the question, for the 16th of June, and the committal appointed for the 20th of June, when the Judges were ordered to attend. On the 19th a petition was presented from the creditors of the Duke of Ormonde, begging that provision should be made for their relief. The motion that the Bill do pass was carried by 44 to 19. The Bill, 1 George, Stat. II, chapter 50, received the royal assent (as a Bill of Supply) on the 26th of June. By it the estates of all persons attainted within a given time were forfeited to the Crown, for the use of the public, estates tail were by the same Act vested in the Crown in fee simple, grants of such estates were made void, and commissioners were appointed to carry

out the Act. By the last clause, provision was to be made for the wives of the Duke of Ormonde, the Earl of Mar, and Viscount Bolingbroke, and portions for their daughters.

The following protest was inserted at the last stage of the Bill.

1st, We conceive there is no necessity of this Bill, because the ordinary forms of law will bring all the forfeitures of persons attainted into the Exchequer much sooner, and with less expense to the public, than will be by this Bill.

2ndly, This Bill takes away the estates of persons, though innocent, and subjects them to severe penalties, not to be avoided by any method agreeable to reason or justice.

3rdly, It vests all leases for years, of persons attainted in the Crown, from the four-and-twentieth of June, one thousand seven hundred and fifteen ; whereas, by law, such leases are not forfeited, but from the time of conviction ; and this may overthrow the estates of innocent purchasers or mortgagees of such chattel leases, who may have bought and lent their money under the safe protection of the law.

4thly, Because, by this Bill, all debtors are obliged to discover the debts they owe to any person to the commissioners by the 24th of November, 1716, under the penalty of forfeiting double the debt, in case the creditor happen to be attainted at any time before the 24th of June, 1718, although before the 24th of November, 1716, he be neither accused, nor so much as suspected ; and, we conceive, no construction can be made of that clause, from any seeming inconsistency in it, to exempt it from the absurdity and injustice enacted by it.

5thly, Because any arguments drawn from any part of that clause, to make the rest of it good sense, were they just, yet we cannot agree to enact such a clause, which must either be not good sense or unjust.

6thly, Because every person who has any claim to, or interest in any other man's estate, must make his claim before the commissioners by June, 1717, or else, if the person whose estate is subject to such claim, happens to be attainted by June, 1718, though till then he be never accused nor suspected, they are for ever barred ; and no construction was endeavoured to be made of this clause to excuse it from the absurdity and injustice apparent in it.

7thly, The Act for the Irish forfeitures, being urged as a prece-

dent for this Bill, we conceive, if that Act were liable to the objections which this Bill is, by having in it the like clauses, yet that is no good reason for the passing this; for if that Parliament did a wrong and injustice, it is no argument for this Parliament to do the same, lest, in process of time, repeated precedents of this kind may become too hard for reason and justice.

8thly, Because the general words in this Bill may give occasion to the commissioners to think, and the judges to construe, that they have power to summon Peers, examine them upon oath, and commit them to the common gaol, which, we conceive, was contrary to the sense of the House, and far from their intention to agree to.

9thly, Because this Bill takes away the power from his Majesty of doing the least act of charity to a starving wife and children out of the forfeited estates, except a provision for the wives and daughters of the late Duke of Ormonde, the late Lord Mar, and the late Lord Bolingbroke.

William Berkeley, Lord Berkeley of Stratton.  
 Montague Bertie, Earl of Abingdon.  
 Thomas Foley, Lord Foley.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Mansel, Lord Mansel.  
 John Leveson Gower, Lord Gower.  
 James Compton, Lord Compton.  
 Allen Bathurst, Lord Bathurst.  
 Heneage Finch, Earl of Aylesford.  
 Thomas Trevor, Lord Trevor.  
 George Henry Hay, Lord Hay.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Thomas Wentworth, Earl of Strafford.

## CLXXXVI.

MARCH 25, 1717.

Parliament met on the 20th of February, and was informed in the King's Speech of the projected invasion from Sweden, the intrigues of Gortz and Gyllenburg, fomented it appears by Cardinal Alberoni, and the dangers which the country had run. The letters which passed between these parties were published 'by authority,' and may be found in Bodley Tracts, No. 337. On the passing of the Annual Mutiny Bill, an attempt was made to postpone the question, but the Bill was passed, being carried by 32 to 9.

On this the following protest was entered.

1st, Because no particular reason or occasion is so much as

suggested in this Bill, for keeping on foot a standing army consisting of thirty-two thousand men in this Kingdom, in time of peace ; and therefore this Act will be a precedent for keeping the same army at all times, though this Kingdom be in peace ; which, we think, must inevitably subvert the ancient constitution of this realm, and subject the subjects to arbitrary power.

2ndly, Because, by this Bill, the soldiers are exempted from being arrested by process of law, at the suit of any person for recovering a just debt, or upon any action whatsoever ; which is a great injustice to the subjects, taking from them the benefit of the law for recovering their just demands, and for obtaining satisfaction for any injury done them by a soldier, either by wounding or maiming, or wrongfully taking away his goods : and, we conceive, this will be so far from preserving good order and discipline in the army, that, on the contrary, it will be a great encouragement to the soldiers to live in their quarters in all manner of licentiousness, and to insult their fellow subjects both in their persons and estates, when they know, that by this law they are disabled from obtaining any effectual satisfaction from them, by the course of justice, for any such violence or injury ; and the only reason offered to justify this exemption from arrests, being to prevent the taking soldiers out of his Majesty's service by collusive arrests, we think the preventing such an imaginary mischief can be no reason to discharge the persons of soldiers from being taken upon any civil process, where the cause of action is real, which is a privilege only belonging to a Peer of the realm.

3rdly, Because this Bill doth establish martial law extending to the life of the offenders, in time of peace, which, we conceive contrary to the ancient laws of this Kingdom ; and the soldiers are obliged to obey the military orders of their superior officers, under the penalty of being sentenced by a court-martial to suffer death for their disobedience ; and that without any limitation or restriction, whether such orders are agreeable to the laws of the realm, or not ; when, by the fundamental laws thereof, the commands and orders of the Crown (the supreme authority) are bound and restrained within the compass of the law, and no person is obliged to obey any such order or command, if it be illegal, and is punishable by law, if he does, notwithstanding any such order or command, though from the King.

George Compton, Earl of Northampton.  
 Thomas Trevor, Lord Trevor.  
 Montague Bertie, Earl of Abingdon.  
 William Legge, Earl of Dartmouth.  
 William Berkeley, Lord Berkeley of Stratton.  
 Allen Bathurst, Lord Bathurst.

## CLXXXVII.

APRIL 3, 1717.

George the Second, at this time Prince of Wales, was born on the 30th of October, 1683. The recognition of this event by public rejoicings and illuminations was an indication of friendliness to the Hanoverian succession, neglect of such acts was taken to prove Jacobite sympathies. It appears that on the 30th of October, 1716, the authorities of the University and City had declined to make any public rejoicings, that those who did celebrate the day were molested, and that windows were broken. Upon this the soldiers quartered at Oxford, at the instigation of their Major, broke the windows of an ironmonger named Hurst, whose premises were opposite the Star Inn, i.e. in what is now Corn Market Street. On the day afterwards a number of depositions declaring the acts of violence committed by the Major, Lieutenant Hamilton, and certain private soldiers, were sworn before Dr. Baron, the Vice-Chancellor (Master of Balliol College), and published.—Bodley Pamphlets, 331. As there had been serious political riots in Oxford the year before, notice was taken early in the session of the circumstances, and papers were laid before the House. The debate on the facts is to be found in Parliamentary History, vol. vii. p. 430.

The Lords then came to the following resolution, 'That the Heads of the University and Mayor of the city neglected to make any public rejoicings on the Prince's birth-day; but some of the collegiates, with the officers, being met to celebrate the said day, the house where they were was assaulted, and the windows were broken by the rabble, which was the beginning and occasion of the riots that ensued, as well from the soldiers as the scholars and townsmen; and that the conduct of the Major seems well justified by the affidavits produced on his part,' by 58 to 32 votes, and severely censure the printing and publishing the depositions taken before the Vice-Chancellor of Oxford, the Mayor (Mr. Wise), and Sir Daniel Webbe.

On this the following protest was entered.

1st, Because, by this resolution, the Heads of all the Colleges and Halls within the University of Oxford stand censured, as we apprehend, for disrespect and want of duty to his Royal Highness the Prince, in neglecting to make public rejoicings on his birthday; whereas it sufficiently appeared to us, that no public rejoicings had

ever been made before that time, within the said University, on the birthday of any heir apparent to the Crown, or even of the sovereign, except only on the 29th of May, set apart by Act of Parliament, perpetually to be observed as a day of public thanksgiving.

And there seems the less reason, in our opinion, for laying so heavy a charge on the heads of those learned societies, inasmuch as they have not been allowed any opportunity of being heard thereto, nor even knew themselves to be any ways accused in that particular.

2ndly, Because the proceedings of the Major, as we conceive, are not to be justified by law, if the affidavits which were sent to make good the complaints against the Major and soldiers be considered, as well as those affidavits which were produced on the Major's part, there being several enormities charged, as well on the Major, as on the soldiers under his command, by the former affidavits, no way answered by the latter, or so much as denied by the Major himself in any of his own affidavits or letters.

3rdly, Because, we conceive, the matter of fact relating to the breaking the windows of the room wherein the Major and others were, with some stones from Hurst's the ironmongers house, has not been sufficiently examined into, for want of giving an opportunity to the complainants of replying to the affidavits relating to that matter; and suppose the truth of that fact had actually appeared upon a full examination, yet it cannot be pretended to be a legal justification of the Major, for inciting or suffering the soldiers under his command to go through the city insulting the magistrates, and breaking the windows of many citizens, who are not pretended to have given the least offence to them.

4thly, Because the officers and soldiers of the army may take occasion, from this resolution, to think themselves exempt from the civil power in criminal cases, and be induced thereby to contemn and resist the authority of the civil magistrates, to which they are, in such cases, as liable as any other of his Majesty's subjects.

5thly, Because the civil officers and magistrates may probably be discouraged, by this resolution, from doing their duty on such occasions, and his Majesty's subjects be deterred from making their just complaints, in an humble and dutiful manner, of any

oppressions which they have suffered, or may suffer, from any officers or soldiers in the army.

Sir William Dawes, Archbishop of York.  
 John Sheffield, Duke of Buckingham.  
 George Compton, Earl of Northampton.  
 William North, Lord North and Grey.  
 George Henry Lee, Earl of Lichfield.  
 George Verney, Lord Willoughby de Broke.  
 William Legge, Earl of Dartmouth.  
 James Compton, Lord Compton.  
 Laurence Fiennes, Viscount Say and Sele.  
 Francis Atterbury, Bishop of Rochester.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 William Berkeley, Lord Berkeley of Stratton.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Foley, Lord Foley.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Francis North, Lord Guilford.  
 Francis Gastrell, Bishop of Chester.  
 George Smallridge, Bishop of Bristol.  
 Montague Bertie, Earl of Abingdon.  
 John Ashburnham, Lord Ashburnham.  
 Thomas Mansel, Lord Mansel.  
 John Robinson, Bishop of London.  
 Simon Harcourt, Lord Harcourt.  
 Thomas Trevor, Lord Trevor.  
 Philip Bisse, Bishop of Hereford.

### CLXXXVIII.

MAY 25, 1717.

On the 22nd of May a petition was read from the Earl of Oxford (Harley), then a prisoner in the Tower, to the effect that articles were exhibited against him on the 9th of July, 1715, that he was committed thereupon, that he has remained a prisoner since that time, and that he petitions the House to take his case into consideration, being ‘assured that their Lordships will determine thereupon according to the rules of justice and the course of Parliament, and that it was not their intention that his confinement should be indefinite.’ On this all the Lords present (it was a very full House, 123 names being entered on the Journal of the day) were formed into a Committee, to whom the petition should be referred, and in particular to ‘search for and report such precedents as relate to the continuance of impeachments from Session to Session, or from Parliament to Parliament.’ The report is presented on the 25th of May by Lord Trevor, and quotes a number of cases between 1660 and 1699 (Lords’ Journals). On this a motion was made, ‘That it is the opinion of this House, that the impeachment exhibited by

the Commons of Great Britain, against the Earl of Oxford and Earl Mortimer, for high crimes and misdemeanors, is determined by the intervening prorogation,' which was negatived by 87 to 45, and it was resolved to proceed with the impeachment. The Earl of Oxford was unanimously acquitted on the 1st of July, the 'Commons not appearing, in order to make good their impeachment.' The resolution of the 19th of March, 1679, affirmed the continuance of impeachments after prorogation and dissolution, and was renewed during the panic of the Popish plot. That of 1685 reversed the rule of 1679, though not without protest (see Protest, No. LIX).

The decision of the House elicited the following protest.

1st, Because there seems to be no difference in law between a prorogation and a dissolution of a Parliament, which, in constant practice, have had the same effect as to determination, both of judicial and legislative proceedings; and consequently this vote may tend to weaken the resolution of this House, May 22, 1685, which was founded upon the law and practice of Parliament in all ages, without one precedent to the contrary, except in the cases which happened after the order made the 19th of March, 1678, which was reversed and annulled in 1685; and in pursuance hereof the Earl of Salisbury was discharged in 1690.

2ndly, Because this can never be extended to any but Peers; for by the statute 4 Edw. III, no commoner can be impeached for any capital crime; and it is hard to conceive, why the Peers should be distinguished and deprived of the benefit of all the laws of liberty, to which the meanest commoner in Britain is entitled; and this seems the more extraordinary, because it is done unasked of the Commons, who, as is conceived, never can ask it with any colour of law, precedent, reason, or justice.

Daniel Finch, Earl of Nottingham.  
Montague Bertie, Earl of Abingdon.  
Francis Atterbury, Bishop of Rochester.  
William North, Lord North and Grey.  
Charles Bruce, Lord Bruce of Whorlton.  
William Legge, Earl of Dartmouth.  
Allen Bathurst, Lord Bathurst.  
Francis North, Lord Guilford.  
Thomas Mansel, Lord Mansel.  
George Henry Hay, Lord Hay.  
Thomas Foley, Lord Foley.

## CLXXXIX.

FEBRUARY 20, 1718.

The following protest is directed against the passage of the annual Mutiny Bill. A question had been put, 'That it be an instruction to the Committee of the whole House, to whom the said Bill stands committed, that they do provide, that no punishment shall be inflicted at any court-martial which shall extend to life or limb,' and the question was negatived by 91 votes to 77.

Memorandum: We, whose names are subscribed, do protest against the first above-mentioned resolution, for refusing the first moved instruction to the Committee on the Mutiny Bill, for the reasons following:

1st, Because the exercise of martial-law, in time of peace, with such power as is given by this Bill to inflict punishments extending to life and limb, was not in the first year of this reign, nor hath in any former reign been allowed within this Kingdom by consent of Parliament, but hath, upon any attempts made to introduce such a power, been opposed and condemned by Parliament, as repugnant to *Magna Charta*, and inconsistent with the fundamental rights and liberties of a free people.

2ndly, Because, after the Peace of Ryswick, and that of Utrecht, in the several reigns of King William and Queen Anne, of glorious and ever blessed memories, no such power was given to any court-martial; and it is well known, that the forces then continued on foot were kept in exact discipline and order.

3rdly, Because it is not ascertained, either by this Bill, or by any other known law or rule, what words or facts amount to mutiny or desertion, or to an exciting, causing, or joining in mutiny; and consequently the judges in a court-martial have it in their power to declare what words or facts they think fit to be mutiny or desertion, and to take away the life of any officer or soldier, by such an arbitrary decision.

4thly, Because, should death be thought the proper punishment, in time of peace, for mutiny or desertion, or even for the least disobedience to any lawful command, yet, as we conceive, the nature of such offences ought first to have been ascertained by this Bill, and the said offences being declared capital, the trial thereof ought to have been left to the ordinary course of law; in consequence whereof, the officers and soldiers would, upon such

trials, have been entitled to all those valuable privileges which are the birthright of every Briton; nor doth it appear to us, that any inconvenience could thereby have arisen to the public in time of peace, at least, not any such as can justify our depriving the soldiery of those legal rights which belong to the meanest of their fellow-subjects, and even to the vilest of malefactors.

Sir William Dawes, Archbishop of York.  
Henry Scott, Earl of Deloraine.  
John Campbell, Earl of Greenwich (Duke of Argyll).  
William Cavendish, Duke of Devonshire.  
John Hamilton, Lord Belhaven.  
George Verney, Lord Willoughby de Broke.  
George Compton, Earl of Northampton.  
Nicholas Leke, Earl of Scarsdale.  
Francis North, Lord Guilford.  
Thomas Wentworth, Earl of Strafford.  
John Hervey, Earl of Bristol.  
Montague Bertie, Earl of Abingdon.  
William Legge, Earl of Dartmouth.  
John Robinson, Bishop of London.  
Thomas Trevor, Lord Trevor.  
Simon Harcourt, Lord Harcourt.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
Philip Bisse, Bishop of Hereford.  
Charles Townshend, Viscount Townshend.  
John Manners, Duke of Rutland.  
Archibald Campbell, Earl of Ilay.  
John Leveson Gower, Lord Gower.  
Thomas Foley, Lord Foley.  
James Sanderson, Viscount Castleton.  
Allen Bathurst, Lord Bathurst.  
Richard Lumley, Lord Lumley.  
John Poulett, Earl Poulett.  
William Berkeley, Lord Berkeley of Stratton.  
Robert Benson, Lord Bingley.  
James Stuart, Earl of Bute.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Charles Butler, Lord Weston (Earl of Arran).  
Thomas Mansel, Lord Mansel.  
Samuel Masham, Lord Masham.  
Francis Atterbury, Bishop of Rochester.  
Robert Harley, Earl of Oxford.  
Francis Gastrell, Bishop of Chester.  
William North, Lord North and Grey.  
George Smallridge, Bishop of Bristol.  
James Compton, Lord Compton.

## CXC.

FEBRUARY 30. 1718.

The second resolution in the Mutiny Bill, which was negatived by us in '77, was 'That it be an instruction to the said Committee of the House, that they do make an effectual provision to secure the obedience of all the officers and soldiers, to be continued by this Bill to the civil magistrate according to law.'

The protest inserted in the Journals is expressed as follows.

**Memorandum:** We, whose names are subscribed, do protest against the resolution for refusing the other instruction, moved to be given to the same Committee on the Mutiny Bill, for the reasons following:

1st, Because no provision whatsoever is made by the Bill for securing the obedience of the military to the civil power, on which the preservation of our constitution depends.

2ndly, Because, we conceive, that a great number of armed men, governed by martial law, as they have it in their power, so are naturally inclined, not only to disobey, but insult the authority of the civil magistrate; and we are confirmed in this opinion, as well by the experience of what hath happened here at home, as by the histories of all ages and nations; from which it appears, that wheresoever an effectual provision hath not been made to secure the obedience of the soldiers to the laws of their country, the military hath constantly subverted and swallowed up the civil power.

Sir William Dawes, Archbishop of York.

William Cavendish, Duke of Devonshire.

John Campbell, Earl of Greenwich (Duke of Argyll).

William North, Lord North and Grey.

Nicholas Leke, Earl of Scarsdale.

John Hervey, Earl of Bristol.

Thomas Wentworth, Earl of Strafford.

Thomas Trevor, Lord Trevor.

George Verney, Lord Willoughby de Broke.

George Compton, Earl of Northampton.

Henry Scott, Earl of Deloraine.

William Legge, Earl of Dartmouth.

Francis Atterbury, Bishop of Rochester.

Richard Lumley, Lord Lumley.

Henry O'Brien, Viscount Tadcaster (Earl of Thomond).

Francis North, Lord Guilford.

Phillip Bisse, Bishop of Hereford.

James Compton, Lord Compton.

Simon Harcourt, Lord Harcourt.

Charles Townshend, Viscount Townshend.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Hamilton, Lord Belhaven.  
 John Manners, Duke of Rutland.  
 James Sanderson, Viscount Castleton.  
 John Leveson Gower, Lord Gower.  
 Archibald Campbell, Earl of Ilay.  
 Francis Gastrell, Bishop of Chester.  
 Montague Bertie, Earl of Abingdon.  
 Thomas Foley, Lord Foley.  
 Robert Harley, Earl of Oxford.  
 George Smallridge, Bishop of Bristol.  
 John Robinson, Bishop of London.  
 James Stuart, Earl of Bute.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Charles Butler, Lord Weston (Earl of Arran).  
 William Berkeley, Lord Berkeley of Stratton.  
 Allen Bathurst, Lord Bathurst.  
 Samuel Masham, Lord Masham.  
 John Poulett, Earl Poulett.  
 Thomas Mansel, Lord Mansel.  
 Robert Benson, Lord Bingley.

## CXCI.

FEBRUARY 24, 1718.

The following protest was inserted after the third reading of the Mutiny Bill, which was carried by 88 to 61. The debate on the Bill in its previous stages, and at this final stage, will be found in the Parliamentary History, vol. vii. p. 538.

1st, Because the number of sixteen thousand three hundred and forty-seven men is declared necessary by this Bill; but it is not therein declared, nor are we able, any way, to satisfy ourselves from whence that necessity should arise, the Kingdom being now (God be praised) in full peace, without any just apprehensions, either of insurrections at home, or invasions from abroad.

2ndly, Because so numerous force is near double to what hath ever been allowed within this Kingdom, by authority of Parliament, in times of public tranquillity; and being, as we conceive, no ways necessary to support, may, we fear, endanger our constitution, which hath never yet been entirely subverted but by a standing army.

3rdly, Because the charge of keeping up so great a force ought not unnecessarily to be laid on the nation, already over-burthened

with heavy debts; and this charge we conceive to be still more unnecessarily increased by the great number of officers now kept on the establishment, in time of peace; a number far greater (in proportion to that of the soldiers commanded by them) than hath ever yet been thought requisite in times of actual war.

4thly, Because such a number of soldiers, dispersed in quarters throughout the Kingdom, may occasion great hardships, and become very grievous to the people; and thereby cause or increase their disaffection, and will, probably, ruin many of his Majesty's good subjects, on whom they shall be quartered, and who have been already by that means greatly impoverished.

5thly, Because such a standing army, dangerous in itself to a free people in time of peace, is, in our opinion, rendered yet more dangerous, by their being made subject to martial law, a law unknown to our constitution, destructive of our liberties, not endured by our ancestors, and never mentioned in any of our statutes, but in order to condemn it.

6thly, Because the officers and soldiers themselves, thus subjected to martial law, are thereby, upon their trials, divested of all those rights and privileges which render the people of this realm the envy of all other nations, and become liable to such hardships and punishments as the lenity and mercy of our known laws utterly disallow; and we cannot but think those persons best prepared, and most easily tempted to strip others of their rights, who have already lost their own.

7thly, Because a much larger jurisdiction is given to courts martial by this Bill, than, to us, seems necessary for maintaining discipline in the army, such jurisdiction extending not only to mutiny, desertion, breach of duty and disobedience to military commands, but also to all immoralities, and every instance of misbehaviour which may be committed by any officer or soldier towards any of his fellow subjects; by which means the law of the land, in cases proper to be judged by that alone, may, by the summary method of proceedings in courts martial, be obstructed or superseded, and many grievous offences may remain unpunished.

8thly, Because the officers constituting a court martial, do at once supply the place of judges and jurymen, and ought therefore, as we conceive, to be sworn upon their trying any offence whatsoever; and yet it is provided by this Bill, that such officers shall be

sworn upon their trying such offences only as are punishable by death ; which provision we apprehend to be defective and unwarranted by any precedent, there being no instance within our knowledge, wherein the judges of any court, having cognisance of capital and lesser crimes, are under the obligation of an oath in respect of the one, and not of the other.

9thly, Because the Articles of War thought necessary to secure the discipline of the army, in cases unprovided for by this Bill, ought, in our opinion, to have been inserted therein, in like manner as the Articles and Orders for regulating and governing the navy were enacted in the thirteenth year of King Charles II, to the end that due consideration might have been had by Parliament of the duty enjoined by each article to the soldiers, and of the measure of their punishment ; whereas the sanction of Parliament is now given by this Bill to what they have had no opportunity to consider.

10thly, Because the clause in this Bill enabling his Majesty to establish Articles of War, and erect courts martial, with power to try and determine any offences to be specified in such Articles, and to inflict punishments for the same within this Kingdom in time of peace, doth (as we conceive) in all those instances, vest a sole legislative power in the Crown ; which power, how safely soever it may be lodged with his present Majesty, and how tenderly soever it may be exercised by him, may yet prove of dangerous consequence, should it be drawn into precedent in future reigns.

11thly, Because the clause in the Bill, alleged to be made for enabling honest creditors to recover their just debts from soldiers, seems to us rather to give a protection to the soldier, than any real advantage to his creditor, or other person having just cause of action against him. It protects the person of a soldier from execution, as well as the mesne process, for any debt under ten pounds ; and it protects the estate and effects as well as the person of every soldier from all other suits but for debt, where the cause of action doth not amount to the like sum ; and in other cases, where the cause of action exceeds that value, plaintiffs are in many instances put under such unreasonable difficulties, that, we conceive, before they can be allowed even to commence their suit, their bare compliance therewith may become more grievous to them than the loss of their debt, or a quiet submission to the wrong sustained ; by which means his Majesty's good subjects may be highly injured in

their properties, and insulted in their persons by the soldiery, and yet be deprived of the legal remedies appointed for the redress of such grievances.

Sir William Dawes, Archbishop of York.  
 George Compton, Earl of Northampton.  
 Thomas Wentworth, Earl of Strafford.  
 Francis Gastrell, Bishop of Chester.  
 Nicholas Leke, Earl of Scarsdale.  
 John Hervey, Earl of Bristol.  
 John Leveson Gower, Lord Gower.  
 John Campbell, Earl of Greenwich (Duke of Argyll).  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 James Compton, Lord Compton.  
 John Poulett, Earl Poulett.  
 George Henry Lee, Earl of Lichfield.  
 James Stuart, Earl of Bute.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 Francis North, Lord Guilford.  
 Simon Harcourt, Lord Harcourt.  
 Robert Benson, Lord Bingley.  
 William North, Lord North and Grey.  
 Thomas Foley, Lord Foley.  
 Archibald Campbell, Earl of Ilay.  
 William Legge, Earl of Dartmouth.  
 Thomas Mansel, Lord Mansel.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Allen Bathurst, Lord Bathurst.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Philip Bisse, Bishop of Hereford.  
 Thomas Trevor, Lord Trevor.  
 Robert Harley, Earl of Oxford.  
 Francis Atterbury, Bishop of Rochester.  
 Montague Bertie, Earl of Abingdon.

## CXCII.

MARCH 8, 1718.

Acts had been passed in the reign of Anne appointing certain Commissioners for the purpose of building fifty new churches in and about Westminster and the suburbs thereof. They are 9 Anne 22, 10 Anne 11. A Bill had been introduced from the Commons empowering the Commissioners to rebuild the church of St. Giles' in the Fields in place of one of the fifty new churches. In the preamble of the Bill it was proposed to add the words 'of pious memory' to the style of the late Queen, but the motion was rejected by 54 votes to 33. At this time the Bangorian controversy was at the hottest.

The following protest was entered against the omission of the words above quoted.

Because we cannot but judge these words ‘of pious memory’ highly decent and proper to have been inserted in a Bill reciting two pious and gracious Acts of Parliament passed in the reign of her late Majesty, for the rebuilding of fifty new churches; a work earnestly recommended by her Majesty to her Parliament, and by them declared to be so much for the honour of God, the spiritual welfare of her Majesty’s subjects, the interest of the Established Church, and the glory of her Majesty’s reign.

Sir William Dawes, Archbishop of York.  
 John Sheffield, Duke of Buckingham.  
 John Robinson, Bishop of London.  
 Philip Bissex, Bishop of Hereford.  
 Robert Harley, Earl of Oxford.  
 Francis Gastrell, Bishop of Chester.  
 George Smallridge, Bishop of Bristol.  
 William North, Lord North and Grey.  
 John Poulett, Earl Poulett.  
 James Compton, Lord Compton.  
 Francis Atterbury, Bishop of Rochester.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Mansel, Lord Mansel.  
 Allen Bathurst, Lord Bathurst.  
 George Verney, Lord Willoughby de Broke.  
 Thomas Wentworth, Earl of Strafford.  
 William Berkeley, Lord Berkeley of Stratton.  
 Samuel Masham, Lord Masham.  
 Thomas Foley, Lord Foley.

### CXCIII.

MARCH 8, 1718.

The St. Giles’ Church Act was carried by 70 votes to 63.  
 On this the following protest was inserted in the Journals, headed by Sheffield, Duke of Buckingham.

1st, Because it doth not appear to us, from any declaration in his Majesty’s name to either House of Parliament, that his royal leave was given for bringing in the said Bill, as, we humbly conceive, it ought to have been, for bringing in a Bill of this nature.

2ndly, Because this Bill, in our opinion, manifestly tends to defeat the ends and purposes of two Acts of Parliament for building fifty new churches; and yet at the same time asserts, that the intention of the said Acts would be hereby answered.

3rdly, Because this Bill further asserts, that the parish of St. Giles is in no condition to raise or pay the sum of three thousand pounds and upwards for the repair of its parish church, which we apprehend to be evidently false in fact; and if true, to be no reason for rebuilding the said church out of the fund given for building fifty new churches.

4thly, Because this Bill moreover asserts, that the said parish church when rebuilt, and the church which is now building in the said parish, by virtue of the Acts for building fifty new churches, will be sufficient for the inhabitants of the said parish; whereas we are credibly informed, and, upon the best calculation, do believe, that there are about forty thousand souls in the said parish, and do think, that three new churches, together with the present parish church, will be barely sufficient for that number.

5thly, Because if this precedent of rebuilding old churches out of the fund appropriated for building new ones should be followed, and the ends of the abovesaid Acts should be thereby in any great measure defeated, we are apprehensive that many thousands of his Majesty's good subjects, in and about these populous cities, will be left unprovided of churches, whereunto they may resort for the public worship of God, and will thereby remain destitute of the necessary means of being instructed in the true Christian religion, as it is now professed in the Church of England, and established by the laws of this Realm.

Sir William Dawes, Archbishop of York.

John Robinson, Bishop of London.

Philip Bisse, Bishop of Hereford.

George Smallridge, Bishop of Bristol.

Francis Gastrell, Bishop of Chester.

Allen Bathurst, Lord Bathurst.

Robert Harley, Earl of Oxford.

William North, Lord North and Grey.

John Poulett, Earl Poulett.

Thomas Wentworth, Earl of Strafford.

Charles Boyle, Lord Boyle (Earl of Orrery).

Thomas Foley, Lord Foley.

George Verney, Lord Willoughby de Broke.

Thomas Mansel, Lord Mansel.

William Berkeley, Lord Berkeley of Stratton.

Francis Atterbury, Bishop of Rochester.

Samuel Masham, Lord Masham.

## CXCIV.

MARCH 11, 1718.

The 'Act for vesting the forfeited estates in England and Ireland in Trustees, to be sold for the use of the public, and for giving relief to lawful creditors by determining their claims, and for the more effectual bringing into the respective Exchequers the rents and profits of the said estates till sold' (4 George I, cap. viii), was opposed at every stage in the Lords.

The following protest was entered, on the motion that the Bill do pass being carried by 82 votes to 76.

1st, Because, we humbly conceive, that the charges of this commission are a very great and unnecessary burthen on the public, and will swallow up a great part of that fund the commissioners are appointed to be guardians of; whereas the ends of that trust, which is lodged in them by this Bill, might have been more easily, more justly and with less expense, attained by the known and ordinary course of the law.

2ndly, Because there is erected in this Bill a court of judicature with strange and new powers, viz. in a summary way, and without the formality of proceedings in the Courts of Law or Equity 'to proceed by, and upon the testimony of witnesses upon oath; examination of persons claiming, or otherwise interested upon their oaths, inspection and examination of deeds, writings and records; and by all or any of the said ways and means, or otherwise, according to the circumstances of the case, or of the persons claiming, as soon as conveniently may be, to hear, determine, and adjudge, all and every claim and claims:' which words seem to contain the most arbitrary and unlimited authority that can possibly be created; and in particular, the expression concerning the circumstances of the persons is not only unknown to our laws, but prescribes a rule which was never yet thought to be a proper ingredient in the impartial administration of justice.

3rdly, Because there is in this Bill a penalty laid on the witnesses who shall forswear themselves to support any claim, but no punishment inflicted on those who shall make false oaths in order to defeat any just demand.

4thly, Because there is nothing in this Bill which incapacitates the commissioners, or any in trust for them, to purchase claims on the forfeited estates; and yet in case they should make such

purchases, they will become both judges and parties in the same cause, and consequently be exposed to temptations of a great and dangerous nature.

5thly, Because the reversing and making void all Acts and decrees of any court of judicature, passed since the 24th day of June, 1715, concerning any right, charge or interest, out of any of the forfeited estates, and the not saving to all creditors and other claimants such right as they had before the passing this Bill, does greatly endanger, if not totally make void the just demands of such creditors or other claimants, which they have not only in many cases a right to by the ancient laws of their country, but which are secured to them (at least in that part of Great Britain called Scotland) by the faith of an Act of Parliament, as a future reward of their dutiful and loyal behaviour to his Majesty and his Government, when the nation was threatened with the greatest dangers; which reward has been confirmed to them by a subsequent Act.

6thly, Because the time of entering claims on estates forfeited, or to be forfeited, before the 24th of June, 1718, is allowed no farther than to the 1st of June in the said year; whereby all creditors, claimants, and *bona fide* purchasers of estates, which may be forfeited between the first and twenty-fourth of June aforesaid, are absolutely and expressly barred and excluded.

7thly, Because the setting up a new court of judicature for claims on forfeited estates, in any part of Great Britain, is wholly unprecedented, and the privileges and jurisdiction of this House are thereby diminished and endangered, but much more so, by the reversing decrees of courts of judicature already made, which, whether they are erroneous or legal, ought (as the constitution of this kingdom now is, and hath hitherto been) to be reviewed, reversed, or affirmed by no other jurisdiction whatsoever, but that which is inherent in the House of Lords.

8thly, Because the Court of Session is by this Bill discharged from exercising their lawful jurisdiction, notwithstanding that the foundation of the constitution of the United Kingdom of Great Britain is the Articles of the Union; wherein it is expressly stipulated, 'that the Court of Session shall remain in all times coming as it was then constituted, with the same authority and privileges as before the Union;' and though the said Court was subjected

to regulation, for the better administration of justice, yet the jurisdiction of it was in no case to be totally extinguished.

9thly, Because the erecting new jurisdictions with such indefinite powers, exclusive of the House of Lords, the making void or endangering the rights of great numbers of lawful creditors or other claimants, secured to them by the laws, and the depriving the courts of justice of their judicature as aforesaid, we humbly apprehend, cannot but raise the highest discontents in the minds of his Majesty's subjects.

John Sheffield, Duke of **Buckingham**.  
 George Smallridge, Bishop of **Bristol**.  
 George Compton, Earl of **Northampton**.  
 Other Windsor, Earl of **Plymouth**.  
 Francis Atterbury, Bishop of **Rochester**.  
 John Campbell, Earl of **Greenwich** (Duke of **Argyll**).  
 John Hamilton, Lord **Belhaven**.  
 George Henry Lee, Earl of **Lichfield**.  
 Francis North, Lord **Guilford**.  
 Thomas Wentworth, Earl of **Strafford**.  
 James Compton, Lord **Compton**.  
 George Verney, Lord **Willoughby de Broke**.  
 William North, Lord **North and Grey**.  
 Thomas Foley, Lord **Foley**.  
 Archibald Campbell, Earl of **Ilay**.  
 Thomas Windsor, Lord **Montjoy** (Viscount **Windsor**).  
 Charles Boyle, Lord **Boyle** (Earl of **Orrery**).  
 Henry Scott, Earl of **Deloraine**.  
 Robert Harley, Earl of **Oxford**.  
 John Poulett, Earl **Poulett**.  
 Charles Butler, Lord **Weston** (Earl of **Arran**).  
 Henry O'Brien, Viscount **Tadcaster** (Earl of **Thomond**).  
 Allen Bathurst, Lord **Bathurst**.  
 Thomas Mansel, Lord **Mansel**.  
 Samuel Masham, Lord **Masham**.  
 Thomas Trevor, Lord **Trevor**.

### CXCV.

MARCH 17, 1718.

Among the private Acts of this Session of Parliament, was one (cap. iii of these Acts) which explained several Acts for erecting Hospitals and Workhouses within the city of Bristol, for the employing and maintaining the poor thereof. This Bill was passed by 58 to 22. Certain remissions of tests in this Act were noticed, and produced the following protest. It should be mentioned that the schism Act was repealed in this Parliament.

1st, Because the comprehensive latitude of this Bill is such, that all persons without discrimination, whether well or ill affected to our constitution in Church or State, Papists as well as Protestants, Nonjurors as well as those who take the oaths, Jews as well as Christians, are alike capable of being admitted into the corporation to which this Bill refers; and of sharing all the trusts and powers lodged in the members thereof.

2ndly, Because this Bill, whilst it complains of the difficulty of finding a sufficient number of proper and well qualified persons to be elected and constituted guardians and officers of the said corporation, and, to avoid that pretended difficulty, lets in Dissenters, doth at the same time shut out seventeen church-wardens, who, by a former Act, were incorporated therein, and who, by the constitution, have the care of the poor in a special manner entrusted with them.

3rdly, Because this Bill repeals a law, by which the Dissenters were excluded from places and offices in this corporation, and this repeal may hereafter be made use of as a precedent for abrogating other laws, as yet in force, in order to the admission of Dissenters into all places and offices whatsoever.

4thly, Because this Bill, by exempting guardians and officers therein mentioned from the penalties and forfeitures of the Corporation and Test Acts, doth, in our opinion, very much weaken the force of those Acts, which are declared by the legislature to have been made for the security of the Church of England, as by law established, and, as such, are we conceive ratified and made perpetual by that clause in the Act of Union, which enacts, ‘That the Act for the Ministers of the Church of England to be of sound religion, and the Act for the uniformity, and all and singular other Acts of Parliament, then in force, for the establishment and preservation of the Church of England, shall remain and be in full force for ever.’

George Smallridge, Bishop of Bristol.

Thomas Mansel, Lord Mansel.

John Robinson, Bishop of London.

James Compton, Lord Compton.

Charles Boyle, Lord Boyle (Earl of Orrery).

Thomas Windsor, Lord Montjoy (Viscount Windsor).

Robert Harley, Earl of Oxford.

George Henry Hay, Lord Hay (Earl of Kinnoull).

Allen Bathurst, Lord Bathurst.

Charles Butler, Lord Weston (Earl of Arran).  
Francis Atterbury, Bishop of Rochester.  
Sir Jonathan Trelawny, Bishop of Winchester.  
Thomas Wentworth, Earl of Strafford.

## CXCVI.

APRIL 17, 1719.

The House of Lords had been informed that it had been a practice in the city of London to pay sums out of their Chamber for prosecuting, maintaining, and defending certain causes on writs of error lately depending in the House, and they thereupon appointed a Committee to enquire into the facts. This Committee summoned the Town Clerk and Chamberlain of the city, and bade them bring all accounts of payments. From these documents it appeared that the sum of £2827 10s. had been paid since the 8th of November, 1711, out of the city funds for carrying on causes and suits at law relating to the elections of Aldermen and Common Councillors, the particulars of which expenditure are reported to the Lords, and entered on the Journals. The most considerable outlay was that for the elections in Broad-street and Langbourn wards in 1711.

On this report the Lords resolved, by 46 to 17, 'That it is the opinion of this House, that the Common Councils of London, having issued great sums of money out of the Chamber of London, in maintaining several suits at law, between citizen and citizen, relating to controverted elections, have abused their trust, and been guilty of great partiality, and of a gross mismanagement of the city treasure, and a violation of the freedom of elections in the city.'

The following protest was entered.

1st, Because no proof upon oath was made before the Committee, of any one of the facts mentioned in the report; and, we conceive, that without a due proof, upon oath, being first made, so heavy a censure ought not to be passed on any person whatsoever, much less on so considerable a body as the Common Council of the city of London, who have been, on many pressing occasions, eminently serviceable to the public.

2ndly, Because the Common Council of the city of London have never been heard to the several matters of which they stand condemned by this resolution, nor have they been any way made acquainted, as far as appears to us, that they stood accused before this House of any misbehaviour whatsoever.

3rdly, Because the several matters or offences, specified in this resolution, are properly cognizable in courts of law or equity; and this resolution may, we fear, be construed as a determination of

such matters as may possibly hereafter be brought again before this House judicially, by writ of error or appeal.

4thly, Because the several sums of money mentioned in the report to have been issued by the Common Council out of the Chamber of the city of London, in relation to controverted elections, might possibly, had the Common Council been heard, have appeared to have been so issued by them in defence of their ancient rights and privileges, and in order to prevent any encroachment thereupon.

John Sheffield, Duke of Buckingham.  
 George Compton, Earl of Northampton.  
 Simon Harcourt, Lord Harcourt.  
 James Compton, Lord Compton.  
 John Leveson Gower, Lord Gower.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Allen Bathurst, Lord Bathurst.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Henry Boyle, Lord Carleton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Thomas Mansel, Lord Mansel.  
 Thomas Foley, Lord Foley.  
 Thomas Trevor, Lord Trevor.  
 Thomas Wentworth, Earl of Strafford.  
 Robert Harley, Earl of Oxford.  
 Robert Benson, Lord Bingley.

### CXCVII.

JANUARY 10, 1721.

The South-Sea scheme was matured during the autumn of 1720. In August, South-Sea stock was at 1000; by the end of September it had sunk to 300; in November to 135.—See Macpherson's History of Commerce. The reaction from this speculative fever raised Walpole to power, whose schemes for restoring public credit were promulgated on the 21st of December. In the debate on the state of public credit in the Lords on the 9th of January, the Lords resolve, 'That the constitution from the Commissioners of the Treasury, dated the 6th of May, 1720, appointing the directors of the South-Sea Company to be managers and directors for performing such matters and things as by the Act for enabling the said Company to increase their present capital stock, are directed, has been conformable to precedents, and legal,' by 63 to 28 votes; Lord Harcourt having declared his opinion in the affirmative.

On this the following protest was inserted in the Journals.

1st, Because the Act of the last Session of Parliament for enabling the South-Sea Company to increase their capital stock

(upon which Act the legality of the constitution in the question must wholly depend) hath vested the directors and managers to be appointed by the Commissioners of the Treasury with such trusts and powers, and required such things to be done by them, as, we conceive, could not be entrusted to the directors of the South-Sea Company to execute, according to the true intent and meaning of the said Act.

2ndly, Because we conceive it to be inconsistent with the said Act, that the directors and managers appointed by the Commissioners of the Treasury (who, by the Act are entrusted to ascertain what annuities shall be taken in, and what debts paid off by the said Company ; what additions, in respect thereof, shall be made to the capital stock of the said Company ; how much is to be paid by the said Company into the Exchequer for the use of the public ; what new allowance is to be made to the same corporation for charges of management ; to enter into books the prices to be agreed on between the Company on the one part, and the proprietors of the public debts on the other part ; to adjust the accounts of the debts and annuities taken in by the Company ; and to certify and transmit duplicates of the accounts so adjusted, among others, to the directors of the South-Sea Company) should be the directors of the South-Sea Company, and they only.

3rdly, Because the said directors of the Company appear to us plainly to be concerned in interest, so as to incline them to execute the said powers or trusts partially for the Company, unless restrained by a great degree of honesty ; and if there should be any mistake by them committed, wilfully or otherwise, to the advantage of the Company and disadvantage of the said proprietors, in any of the matters intrusted to the said directors and managers, we do not find any provision in the said Act to rectify the same, nor conceive how it can be done, unless by application to, and by consent of, the said directors and managers, who are the directors of the South-Sea Company, and no other : which, we think, could never be the meaning of the Act, but that the intent thereof must be, that the said trusts of directors and managers should have been executed by impartial and indifferent persons.

4thly, We conceive, that the said Act expressly requires the Commissioners of the Treasury to appoint fit persons to be directors and managers for executing the powers and trusts above

specified ; and therefore, if the above-mentioned reasons did not sufficiently prove the constitution in the question not to be agreeable to the said Act, yet it seems very clear to us, that the directors of the South-Sea Company were, of all others, the most unfit for such a trust, and consequently not such persons as are expressly required by the said Act.

And we cannot agree, that the said constitution is precedented.

1. Because the precedents produced are all in time before the passing the Act of Parliament, on which the present question did arise ; and therefore, in our opinion, can be of no weight in determining any question that dependeth on the construction of the said Act, unless such precedents had been founded on some former Act or Acts of Parliament, the same in all material points with the act above mentioned ; which, it appears to us, neither the said charter, nor commissions, or appointments produced as precedents were.

2. All the cases relied on, as precedents (except the last) are, as we conceive, widely differing from the case in question ; that marked No. 1 is dated before the erection of the South-Sea Company, and therefore did not, nor could, confer any powers on the directors of the Company, which was not then in being, but is directed to the members of other corporations, divers great officers, and very many other persons, in order to the erecting the South-Sea Company ; the five following, from No. 2 to No. 6, included, are indeed to empower the directors of the South-Sea Company, but it is only to take subscriptions of tallies, orders, debentures, and the like government securities, and to compute the interest due thereon, in order to the admitting the proprietors into the Company, at the rates stated in the Acts of Parliament, to which the charter and commissions relate ; but none of them empower the directors of the South-Sea Company to enter, adjust, or certify, or to do any matter relating to contracts to be made, whereto the Company was to be made a party, as in the present case.

3. And as to the said last case, cited as a precedent, marked No. 7, which comes the nearest to the present, the directors of the South-Sea Company being thereby appointed directors and managers (which they are not by any of the former) to execute all the powers given to directors and managers, by the Act of the

fifth of his present Majesty, for redeeming the fund appropriated for the payment of the lottery-tickets, yet neither by that appointment, or the Act referred to, had the directors of the South-Sea Company any authority to do any thing in relation to contracts, or bargains to be made, wherein the Company was to be a party; and therefore not to be compared to the present case.

4. But if the said last and only precedent, not before taken notice of, had been a precedent in point, yet it bearing date no longer ago than the 4th of April, 1719, and being signed by four of the five Commissioners of the Treasury, who have signed the appointment, which it is brought to justify, and having passed under silence, no occasion having happened to draw the validity thereof into question, it could be, as we conceive, of no authority to support the said last appointment, when it was drawn in question, and ordered to be considered by the Committee of the whole House, appointed to enquire into the causes of the late unhappy turn of affairs, which has so much affected the public credit at home.

For the aforesaid reasons, and lest it might be deemed to be a prejudging of a matter that may possibly be brought judicially before us.

Philip Wharton, Duke of Wharton.  
Nicholas Leke, Earl of Scarsdale.  
William North, Lord North and Grey.  
George Henry Lee, Earl of Lichfield.  
Francis North, Lord Guilford.  
William Cowper, Earl Cowper.  
John Leveson Gower, Lord Gower.  
Heneage Finch, Earl of Aylesford.  
James Compton, Lord Compton.  
Allen Bathurst, Lord Bathurst.  
Montague Bertie, Earl of Abingdon.  
Charles Butler, Lord Weston (Earl of Arran).  
Thomas Wentworth, Earl of Strafford.  
Rowland St. John, Lord St. John of Bletso.  
Robert Benson, Lord Bingley.

### CXCVIII.

MARCH 8, 1721.

On the 21st of February a Bill was brought from the House of Commons under the title of 'An Act to preserve and encourage the woollen and silk

manufactures of this Kingdom, and for the more effectual employing the poor, by prohibiting the use and wear of all printed, painted, stained, or dyed calicoes, in apparel, household stuff, furniture or otherwise, after the 25th of December, 1722.' This Act passed the Lords, and is found in the Statute Book under 7 George I, stat. 1, cap. 7. It appears that there was no opposition to the Act, the protest annexed having for its object the earlier interference of the Legislature, since it was proposed to make the Act commence from 1721, though the amendment was rejected by 71 to 19. The Act was amended by 9 George II, cap. iv, and continued in existence till recent reforms in trade and manufactures. The subject seems to have excited considerable interest out of doors, as there are several pamphlets on the subject in the Bodley Collection (vol. 356). One in particular, written by Claudius Rey, a weaver, puts the case of the weavers on the ground which was accepted as valid by the political economy of the age, and mixes up with such reasonings the danger of exciting sympathy with the Pretender by refusing to recognise the claims of the weavers. The other view of the case is contained in a pamphlet entitled, *The Weavers' Pretences Examined*. The printed calicoes were foreign imports, chiefly of the East India Company

1st, Because it appears to us very extraordinary, and, as we believe, is unprecedented, that any Bill of this nature should not take effect till so long after the passing thereof, and even almost a year after the Parliament, in which it passed, must legally determine.

2ndly, We think the delay in this case the more unreasonable, the miseries of the people proposed to be remedied by this Bill requiring a speedy redress; and after the loss of the like Bill the last Session, deferring the relief for near two years longer, may, we fear, reduce the poor manufacturers to such want as may endanger the public peace, or make as many as can turn themselves to other business, to the ruin of the woollen manufactures of this Kingdom.

3rdly, We conceive, that till the Bill shall take place, it will rather encourage than hinder the buying of printed calicoes, which is at present obstructed by the apprehension of a much nearer and stricter prohibition; but when it shall be known not to extend to any calicoes which shall be made up in furniture before the 25th of December, 1722, and that the same may be continued in use till worn out, it cannot but be a great inducement to the people to furnish themselves therewith.

4thly, We do not think it improbable, considering the mighty influence the great companies may have on public affairs, but that

attempts may be made, even before the provisions of the Act take place, to repeal it; and we cannot take upon us to determine what the sense of a new Parliament may be on this subject.

5thly, And, we apprehend, the deferring the remedy of the mischiefs set forth in the preamble of the Bill, for so long a time, may disappoint, in great measure, the hopes which the people of this Kingdom have so justly entertained, of having an end put to the difficulties the woollen manufactures lie under in this Session of Parliament.

Rowland St. John, Lord **St. John of Bletsoe**.  
 George Henry Lee, Earl of **Lichfield**.  
 Thomas Wentworth, Earl of **Strafford**.  
 William Cowper, Earl **Cowper**.  
 Philip Wharton, Duke of **Wharton**.  
 Nicholas Leke, Earl of **Scarsdale**.  
 Henry Paget, Earl of **Uxbridge**.  
 William North, Lord **North and Grey**.  
 George Henry Hay, Lord **Hay** (Earl of Kinnoull).  
 Charles Boyle, Lord **Boyle** (Earl of Orrery).  
 Samuel Masham, Lord **Masham**.  
 Montague Bertie, Earl of **Abingdon**.  
 Thomas Mansel, Lord **Mansel**.  
 Francis North, Lord **Guilford**.  
 William Craven, Lord **Craven**.  
 Allen Bathurst, Lord **Bathurst**.  
 John Leveson Gower, Lord **Gower**.  
 William Capel, Earl of **Essex**.  
 Heneage Finch, Earl of **Aylesford**.  
 William Greville, Lord **Brooke**.

### CXCIX.

NOVEMBER 13, 1721.

The King's Speech on the 19th of October called attention to the considerable amount of the Navy debt, observed that, while so large a debt remained unprovided for, Navy and Victualling Bills were at a very high discount, and that the fact affected public credit generally, as well as increased the charge and expense of the current service. The Speech therefore recommended the House of Commons to find a method of discharging this part of the National Debt, which, of all others, is most heavy and burdensome. The amount of this debt was stated to be about £1,700,000. In the debate in the House of Commons, where Shippen, Freeman, and Jekyll attacked the administration, Walpole answered them by asserting that £1,100,000 of the debt was contracted in the reign of Anne. A million was granted, and the House agreed to Jekyll's motion

for an account of the sums granted by Parliament for the navy from the 1st of January, 1721. When the question was before the Lords, the Duke of Wharton, Earls Cowper and Coningsby, Lords North and Grey, Trevor, and Bathurst, and the Bishop of Rochester attacked the Government, who made the same defence as in the Commons by Lord Teynham. The Opposition proposed moreover to add to a resolution 'that they will take into consideration on a given day the causes for contracting so large a debt,' the words 'and the best methods of preventing the contracting the like debt for the future.' This proposal was rejected by 64 votes to 22.

On this the following protest was inserted.

1st, Because the principal end of all Parliamentary inquiries into mismanagements being to prevent the like for the future, we thought it more agreeable to the candour and honour of the House to express it plainly in the question itself, than leave it to be implied only; and the rather, because it seemed to us, the words left out clearly imported that nothing personal was in view, but the public good only, which, we thought, would rather have given satisfaction to the minds of every noble lord, than the contrary.

2ndly, When the words now ordered to be left out were, for the reason given, so properly and naturally, as we conceive, made a part of the question, we could not but apprehend, that the laying them aside on debate might create a suspicion, though unjust, that this House did not intend to prevent, if possible, the contracting a large and inconvenient Navy debt for the future.

3rdly, His Majesty having, in his Speech from the throne, observed the ill consequences that arise from such a large debt remaining unprovided for, we thought it very proper, if not necessary, in the resolution taken, to enter into the consideration of that debt, to express a desire of preventing the like inconvenient debt being contracted for the future; and that the doing so did not at all prejudge the causes of contracting the present great Navy debt; for however necessarily or justifiably an inconvenient thing might have once happened, yet we think it ought, if it can, to be prevented from happening so again.

4thly, His Majesty having likewise observed, in his Speech from the throne, that this part of the National Debt is, of all others, the most heavy and burthensome; and having set forth the mischiefs arising from the high discount on the Navy and Victualling Bills, we thought ourselves sufficiently warranted to express a desire to consider of the best methods of preventing the like most heavy and

burthensome debt, whatever the causes of contracting the present debt shall, on inquiry, appear to be ; and this the rather, because the like Navy debt can bring no manner of benefit, either to the public or any private person, but to such as, by foreseeing when it is either to be discharged or provided for, may make an excessive advantage to themselves by buying up the said bills while under a very high discount.

Sir William Dawes, Archbishop of York.  
 Nicholas Leke, Earl of Scarsdale.  
 Philip Wharton, Duke of Wharton.  
 James Cecil, Earl of Salisbury.  
 William North, Lord North and Grey.  
 William Gordon, Earl of Aberdeen.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 Francis North, Lord Guilford.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Ashburnham, Lord Ashburnham.  
 William Cowper, Earl Cowper.  
 Allen Bathurst, Lord Bathurst.  
 Francis Atterbury, Bishop of Rochester.  
 Robert Benson, Lord Bingley.  
 Thomas Trevor, Lord Trevor.  
 Heneage Finch, Earl of Aylesford.

## CC.

NOVEMBER 15, 1721.

Charles XII of Sweden was killed at Frederickshall on the 11th of December, 1718. During the latter years of his life he had intrigued with the Stuart family, and great alarm was felt in England at his projects. He was succeeded by his sister Ulrica, who was married to Frederic of Hesse Cassel, and whom the Estates in 1720 recognised as King of Sweden, but with very limited powers. The English Government entered into amicable relations with the new rulers of Sweden, and Lord Carteret was appointed Minister at Stockholm. The opponents of the Administration moved for copies of the instructions given to Lord Carteret, but the papers were refused by 63 to 21. The treaty with Sweden will be found in Almon, vol. i. p. 353. It was negotiated with Ulrica for eighteen years.

On this the following protest was entered.

1st, Because we apprehend this to be the first instance to be found on our Journals, where Lords have moved for a sight of instructions of any kind, and have not been supported by the House in that motion ; and though we wish it may be the last, yet

have we just reason to fear, that such a precedent once made will not fail of being followed in succeeding times.

2ndly, Because we do not apprehend, how the calling for instructions after the conclusion of the treaty to which they relate, and the intervention of a general act of pardon, can be hurtful either to the public or even to the Ministers transacting such treaties ; but the refusing to call for those instructions may, in our opinion, be a matter of dangerous consequence, inasmuch as it tends to discourage inquiries of this kind for the future, and by that means to embolden and screen guilty Ministers hereafter.

3rdly, Because though we acknowledge the right of peace and war to be in the Crown, yet we must be of opinion, that this House hath also a right to inquire into the transactions of Ministers employed under the Crown, and to censure their conduct, when justice requires it ; which cannot well be done, unless it be first known, what sort of instructions they received, and how far they have, or ought to have complied with them ; and this seems to us more particularly necessary, since the Act of Succession has declared, that this Kingdom shall not be engaged in a war, on account of any of the King's foreign dominions ; all treaties therefore with Princes in the north should, above all other, be made in the plainest and most unexceptionable terms ; or if the way of wording such treaties shall occasion any doubt, no method of clearing it should be neglected or avoided, that so this House, and the whole Kingdom, may be satisfied, that nothing has passed derogatory to that Act, which is the basis on which our present happy establishment is founded.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
Philip Wharton, Duke of Wharton.  
Nicholas Leke, Earl of Scarsdale.  
William North, Lord North and Grey.  
Heneage Finch, Earl of Aylesford.  
John Hervey, Earl of Bristol.  
Francis North, Lord Guilford.  
William Gordon, Earl of Aberdeen.  
William Cowper, Earl Cowper.  
Henry Paget, Earl of Uxbridge.  
Allen Bathurst, Lord Bathurst.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Francis Atterbury, Bishop of Rochester.  
Robert Benson, Lord Bingley.

## CCI.

NOVEMBER 20, 1721.

A Treaty of Commerce was concluded with Spain on the 13th of June (New Style), 1721, the Articles having been negotiated by William Stanhope on the part of Great Britain, and the Marquis de Grimaldo on that of Spain. The text of the treaty will be found in Almon's Collection, vol. i. p. 366. The first clause of the King's Speech, read by Lord Chancellor Parker on the 9th of October (the King was present) alluded to the fact that treaties had been negotiated between the King of Spain (Philip V), the Czar (Peter), and the King of Sweden (Frederic of Hesse Cassel). It was moved in the Lords on the 20th of November, that an address should be presented to the King, praying that the Treaty of Commerce should be laid before the House, but the motion was rejected by 59 to 22.

On this the following protest was inserted.

Because, as we believe, the refusing to address for a treaty, which has been concluded and ratified so long since, is altogether unprecedented; and, we conceive, this case, of all others, ought not to have been made a precedent, where the treaty, desired to be called for, hath been twice mentioned from the throne to both Houses of Parliament; and the last time, in his Majesty's Speech at the opening of the Sessions, expressly (as we cannot but apprehend) recommended to the consideration of both Houses of Parliament.

Sir William Dawes, Archbishop of York.  
 Philip Wharton, Duke of Wharton.  
 William North, Lord North and Grey.  
 Thomas Wentworth, Earl of Strafford.  
 Francis North, Lord Guilford.  
 William Gordon, Earl of Aberdeen.  
 William Cowper, Earl Cowper.  
 Heneage Finch, Earl of Aylesford.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Hervey, Earl of Bristol.  
 Robert Benson, Lord Bingley.  
 Francis Atterbury, Bishop of Rochester.  
 Francis Gastrell, Bishop of Chester.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Allen Bathurst, Lord Bathurst.

## CCII.

DECEMBER 5, 1721.

The debate in the Lords on the Navy debt was continued on the 22nd and 27th of November. On the 2nd of December the Commissioners of

the navy laid accounts before the House, and on the 5th of December the whole House went into Committee on the Navy debt. The debate was carried on with considerable warmth, and was continued till five in the evening, the following motion being made, 'that the employing great numbers of seamen for several years last past, more than were provided for by Parliament, was one great cause of contracting so large a Navy debt, and of increasing the same, from the sum of seven hundred and sixty-four thousand and eighty-eight pounds three shillings and eleven pence, which was the nett-debt of the navy on the 31st of December, 1717, to the sum of one million six hundred and forty-one thousand nine hundred and thirty-seven pounds seventeen shillings and eight pence three farthings, which was the nett-debt of the navy on the 30th of December last.'

The motion was rejected by 60 to 21, and the following protest was inserted.

Because the main question being so true in every particular, that, as we could observe, the truth thereof was not denied by any Lord in the debates, but seems to us to be admitted by the proposing and carrying the previous question, we think it highly expedient that the main question should have been put and voted in the affirmative, to the end we might have expressed our disapprobation at the least of the practice of employing much greater numbers of seamen in the fleet, for several years last past, than were provided for by Parliament (when the occasion for employing them could not, in our opinion, but be foreseen), and by such our disapprobation might have discouraged, in some measure, that practice for the future, and prevented the increasing of the Navy debt again by the like proceeding.

Thomas Wentworth, Earl of Strafford.  
 Thomas Trevor, Lord Trevor.  
 William Gordon, Earl of Aberdeen.  
 John Hervey, Earl of Bristol.  
 Francis Gastrell, Bishop of Chester.  
 William Cowper, Earl Cowper.  
 George Henry Lee, Earl of Lichfield.  
 Francis Atterbury, Bishop of Rochester.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Leveson Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.  
 William North, Lord North and Grey.  
 Francis North, Lord Guilford.  
 Henry Paget, Earl of Uxbridge.  
 Heneage Finch, Earl of Aylesford.  
 Thomas Foley, Lord Foley.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Robert Benson, Lord Bingley.

## CCIII.

DECEMBER 6, 1721.

The King's Speech contained an allusion to the fact that the plague was raging in certain parts of Europe. In fact it had been very destructive during the year in the south of France, and particularly in Marseilles, so that a proclamation was issued forbidding all persons to enter England from any port between the Bay of Biscay and Dunkirk, without certificates of health, and ordering certain sanitary precautions. The Speech also declared that all precautions would be fruitless if the abominable practice of running goods be not at once totally suppressed. In consequence, an Act was passed, 8 George I, chapter 8, giving the Crown power for a year to stop communications between the British dominions and infected ports; another, chapter 10, to give necessary sanitary powers; and a third, chapter 18, against the clandestine running of goods. The City of London petitioned to be heard by counsel against certain clauses of the first Bill which they conceived to concern not only the rights, privileges, and immunities, but the trade, safety, and prosperity of the City of London, but their petition was rejected by 48 to 22.

The following protest was then inserted.

1st, Because the liberty of petitioning the King (much more than the petitioning either House of Parliament) is the birth-right of the free people of this realm, claimed by them, and confirmed to them soon after the Revolution, in an Act declaring the rights and liberties of the subject, and settling the succession of the Crown; and whenever any remarkable check hath been given to the free exercise of this right, it hath always been attended with ill consequences to the public.

2ndly, Because the petition so rejected was, in our opinion, every way proper and unexceptionable, both as to the manner of wording and presenting it, and the matter to which it referred; nothing being more natural and reasonable, than that any corporate body should, if they desire it, be heard upon any Bill under the consideration of Parliament, whereby they judge their particular interests to be highly, though not solely, affected.

This liberty we remember to have been granted in a late session, to the traders of Norwich, upon their petition touching the Calico Bill; nor are we aware, that it hath ever, in like circumstances, been refused to the meanest corporation in the Kingdom; but if it had, we humbly conceive, that, in this case, a distinction might have been made in favour of the City of London, which, being the centre of credit, of the trade and monied interest of the Kingdom,

and the place where the plague, should we be visited by it, is most likely first to appear ; and having also remarkably suffered by means of the late fatal South Sea scheme, was, we think, in a particular manner, intitled to apply for relief against some clauses in the quarantine Act, and deserved to have been treated on that occasion with more indulgence and tenderness.

3rdly, Because the rejecting the said petition tends, we conceive, to discountenance all petitions for the future, in cases of a public and general concern, and by that means to deprive the legislature of proper lights, which they might otherwise receive, it being no ways probable, that subjects or societies of less consideration will venture to represent their sense, in cases of like nature, after the City of London have been thus refused to be heard.

4thly, Because as the receiving this petition could have had no ill consequences, as we conceive, nor have given any great interruption to the business of Parliament, so the rejecting it may, we think, widen the unhappy differences that have arisen, and increase the disaffection to the Government, which hath already too much prevailed in this Kingdom.

5thly, Because the arguments used in the debate seem, to us, not to be of sufficient force ; for we cannot conceive, that because the said Act of quarantine is a general Act, therefore no particular community or city, who think they may, in a distinguishing manner, be prejudiced by it, have a right to be heard in relation to it ; and that at a time when it is under the consideration of Parliament ; nor can we be of opinion, that a petition agreed on by the Lord Mayor, Aldermen and citizens of London, in common council assembled, and presented, not even by the numbers allowed by law, but by a Lord of this House, can possibly be a prelude or example towards producing tumultuous petitions ; much less can we see, why it ought the rather to be rejected, because it came from so great a body as the City of London ; on the contrary, we apprehend, that an universal grievance, which may be occasioned by any general Act, must be represented to the legislature by particular persons or bodies corporate, or else it cannot be represented at all ; that the rejecting such petitions, and not the receiving them, is, we think, the way to occasion disorders and tumults ; and that the more considerable the body is, the more regard should be had to any application they make, especially for matters wherein not only the rights,

privileges, and immunities, but also their trade, safety, and prosperity are, as the petition avers, highly concerned.

William North, Lord North and Grey.  
 John Hervey, Earl of Bristol.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Heneage Finch, Earl of Aylesford.  
 Thomas Wentworth, Earl of Strafford.  
 Thomas Trevor, Lord Trevor.  
 William Gordon, Earl of Aberdeen.  
 Francis Gastrell, Bishop of Chester.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Francis North, Lord Guilford.  
 John Leveson Gower, Lord Gower.  
 William Cowper, Earl Cowper.  
 Robert Benson, Lord Bingley.  
 Allen Bathurst, Lord Bathurst.  
 Francis Atterbury, Bishop of Rochester.  
 Henry Paget, Earl of Uxbridge.  
 George Henry Lee, Earl of Lichfield.  
 Thomas Coningsby, Earl of Coningsby.

## CCIV.

DECEMBER 13, 1721.

Lord Cowper moved for leave to bring in a Bill for repealing so much of an Act passed during the last Session (7 Geo. III. cap. 3), as gives a power to remove to a Lazaret, or Pest House, any persons whatsoever infected with the Plague, or healthy persons out of an infected family from their habitations—though distant from any other dwelling-house, and also so much of the said Act as gives power for the drawing lines or trenches round any city, town, or place so infected. Leave was refused by 39 to 20; and the following protest was inserted.

1st, Because the powers specified in the question seem to us such as can never wisely or usefully be put in execution; for by the first of them, persons of what rank or condition so ever, either actually infected, or being in the same habitation, though in lone houses where they are well accommodated, and from whence there is no danger of propagating the infection, may be forcibly removed into common lazarets, or pest-houses; and it does not appear to us, that such a power could, at any time, be reasonably executed; and therefore, we conceive, it should be repealed.

The other power extends to the drawing of lines around any city, town, or place, and consequently around the cities of London and Westminster; the very apprehension of which, upon the least

rumour of a plague, would disperse the rich, and by that means (as well as by hindering the free access of provisions) starve the poor, ruin trade, and destroy all the remains of public and private credit.

2ndly, Because such powers as these are utterly unknown to our constitution, and repugnant, we conceive, to the lenity of our mild and free Government, a tender regard to which was shewn by the Act of *Jacobi I*, which took care only to confine infected persons within their own houses, and to support them under their confinement, and lodged the execution of such powers solely in the civil magistrate; whereas the powers by us excepted against, as they are of a more extraordinary kind, so they will probably (and some of them must necessarily) be executed by military force; and the violent and inhuman methods which, on these occasions, may, as we conceive, be practised, will, we fear, rather draw down the infliction of a new judgment from Heaven, than contribute any ways to remove that which shall then have befallen us.

3rdly, Because, we take it, these methods were copied from France, a kingdom whose pattern, in such cases, Great Britain should not follow, the government there being conducted by arbitrary power, and supported by standing armies; and to such a country such methods do, in our opinion, seem most suitable; and yet, even in that kingdom, the powers thus exercised of late have been as unsuccessful as they were unprecedented; so that no neighbouring state hath any encouragement from thence to follow so fatal an example. In the first plague, with which we were visited *anno dom. 1665*, though none of these methods were made use of, much less authorized by Parliament, yet the infection, however great, was kept from spreading itself into the remoter parts of the Kingdom; nor did the city of London, where it first appeared and chiefly raged, suffer so long or so much, in proportion to the number of its inhabitants, as other cities and towns in France have suffered, where these cruel experiments have been tried.

4thly, Because, had such part of the Act as we think should be repealed, been accordingly repealed, there would still have remained in it a general clause, which gives the Crown all powers necessary to prevent the spreading of infection, and consequently

these very powers, among the rest, if they shall be found necessary; and therefore there is no need, we conceive, to have them expressly granted in the same Act of Parliament, which seems not only to warrant, but in a particular manner to prescribe and direct the use of them.

5thly, Because the great argument urged for continuing these powers specified in the question (that they would probably never be put in execution in the cases objected to), seems to us a clear reason why they should not be continued; for we cannot imagine why they should stand enacted, unless they are intended to be executed, or of what use it will be to the public to keep the minds of the people perpetually alarmed with those apprehensions, under which they now labour, as appears by the petition from the City of London lately rejected: it may be an instance of our great confidence in his Majesty's wisdom and goodness, when we trust him with such powers, unknown to the constitution; but, we think, it ill becomes us to repose such trust, when it tends, in our opinion, rather to render him terrible than amiable to his subjects, and when the only advantage he can (as we conceive), draw from the trust reposed in him is, not to make use of it.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William Gordon, Earl of Aberdeen.  
John Hervey, Earl of Bristol.  
Francis North, Lord Guilford.  
William North, Lord North and Grey.  
Thomas Coningsby, Earl of Coningsby.  
Thomas Trevor, Lord Trevor.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Rowland St. John, Lord St. John of Bletsoe.  
William Cowper, Earl Cowper.  
Charles Butler, Lord Weston (Earl of Arran).  
Henry Paget, Earl of Uxbridge.  
Allen Bathurst, Lord Bathurst.  
Francis Gastrell, Bishop of Chester.  
John Leveson Gower, Lord Gower.  
Robert Benson, Lord Bingley.  
Heneage Finch, Earl of Aylesford.  
Francis Atterbury, Bishop of Rochester.  
Thomas Foley, Lord Foley.

## CCV.

DECEMBER 19, 1721.

Sir George Byng, afterwards Viscount Torrington, fought the naval battle of Cape Passaro on the 11th of August, 1718, the Spanish admiral being Castafieta. The action was, according to documents quoted by Lord Stanhope, commenced by the Spaniards. There was at the time no war between England and Spain, but the instructions which Stanhope gave to Byng, which Lord Strafford asked for, and which were refused, are referred to in Stanhope's history. The plea on which Lord Strafford requested those papers, was 'that as the attack on Spain was undertaken without necessity, or a just provocation, so the peace was concluded without benefit or advantage.' The evidence which was in the hands of the Government as to the designs of Alberoni, and his intrigues against the Hanoverian succession, explain the course which was adopted against Spain. The motion was rejected by 67 to 24.

The following protest is entered.

1st, Because not finding any instance, on search of the Journals, we believe there is none, wherein a motion for Admirals instructions, to be laid before the House, has been denied; but, on the contrary, there are many precedents of instructions of a like nature, and in stronger cases, as we conceive, addressed for by the House, and several, in point, for instructions given to Admirals, particularly to Sir George Rooke and Sir Cloutesley Shovel; nor does it seem, to us, at all material, whether the conduct of such Admirals had or had not been blamed before such instructions were asked for, since the sight of instructions may be previously and absolutely necessary to inform the House, whether their conduct be blameable or not.

2ndly, Because we think it highly reasonable, that those instructions should be laid before this House, upon which the action of the British against the Spanish fleet in the Mediterranean was founded, without any previous declaration of war, and even whilst a British Minister, a Secretary of State, was amicably treating at Madrid, which court might justly conclude itself secure from any hostile attack during the continuance of such negotiations.

3rdly, Because till we have a sight of those instructions, and are able to judge of the reasons on which they are founded, the war with Spain, in which that action of our fleet involved us, does not appear to us so justifiable as we could wish, and yet it

was plainly prejudicial to the nation in sundry respects; for it occasioned an entire interruption of our most valuable commerce with Spain, at a time when Great Britain needed all the advantages of peace to extricate itself from that heavy national debt it lay under; and as it deprived us of the friendship of Spain (not easily to be retrieved) so it gave our rivals in trade an opportunity to insinuate themselves into their affections; and, we conceive, that to that war alone is owing the strict union there is at present between the Crowns of France and Spain, which it was the interest of Great Britain to have kept always divided; an union which, in its consequences, may prove fatal to these kingdoms.

Nor does it appear that Great Britain has had any fruits from this war, beyond its being restored to the same trade we had with Spain before we began it.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William North, Lord North and Grey.  
William Gordon, Earl of Aberdeen.  
Francis North, Lord Guilford.  
John Hervey, Earl of Bristol.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Henry Paget, Earl of Uxbridge.  
Allen Bathurst, Lord Bathurst.  
Heneage Finch, Earl of Aylesford.  
Nicholas Leke, Earl of Scarsdale.  
Thomas Foley, Lord Foley.  
John Leveson Gower, Lord Gower.  
Charles Butler, Lord Weston (Earl of Arran).  
Francis Gastrell, Bishop of Chester.  
Rowland St. John, Lord St. John of Bletsoe.  
William Cowper, Earl Cowper.  
James Compton, Lord Compton.  
Thomas Trevor, Lord Trevor.

## CCVI.

DECEMBER 21, 1721.

The annual Mutiny Bill was, it appears, passed without a division, but not without protest.

1st, Because we have heard no arguments to convince us, that there is any necessity for a greater number of troops being kept on foot at this time, than there was after the peace of Ryswick,

or the peace of Utrecht ; for as to the argument urged, from the present disaffection of the people, we are fully persuaded, that the keeping up so great an army is much more likely to increase than lessen such disaffection.

2ndly, Because this precedent is likely to be followed in all subsequent times, there being no probability that a conjuncture can happen, when there will be less apparent reason for keeping up a great number of forces, than at this time of general tranquillity.

3rdly, Because, we conceive, there are several clauses in this Bill, which tend to overthrow the civil power in this Kingdom, and turn it into a military Government ; and we apprehend it to be our duty, to take care that so dangerous a precedent may not be made for any future time, without an evident necessity ; and it is plain there is no such necessity for erecting this military power, within this Kingdom, in time of peace, because the army was well governed without it in the two former reigns.

4thly, That allowing such a number of troops were necessary, yet there is no reason can be alleged, as we apprehend, that they should be constituted in this expensive manner, which raises the charge upon the nation to about double what it was, in time of peace, in the two former reigns ; and we must, with great concern, assert, that the public is much less able to bear such an excess at the present, than at any former time.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William Gordon, Earl of Aberdeen.  
Nicholas Leke, Earl of Scarsdale.  
William North, Lord North and Grey.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
John Hervey, Earl of Bristol.  
Henry Paget, Earl of Uxbridge.  
Allen Bathurst, Lord Bathurst.  
Francis Atterbury, Bishop of Rochester.  
Francis North, Lord Guilford.  
Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
Francis Gastrell, Bishop of Chester.  
Thomas Foley, Lord Foley.  
Thomas Trevor, Lord Trevor.

## CCVII.

JANUARY 13, 1722.

The question of the Navy debt was still before the House, and a motion was made that one great cause of the debt was the practice of not paying off the ships when they come home from their voyage, but continuing them in sea pay during the winter. This motion was made by Earl Cowper, and the practice was defended by Lord Torrington. The motion was negatived apparently without a division.

The following protest was inserted in the Journals.

1st, Because, we conceive, the main question ought to have been put, since the practice complained of in it having been from the year 1690 very frequently represented against to the Admiralty and the Treasury, by the Commissioners of the navy (the proper officers to give advice in such matters), and who then were men of great experience, ability, and probity ; for being contrary to the ancient usage of the navy, giving great disgust to the seamen, and causing an unnecessary expense of the public money, we thought it highly reasonable to endeavour that a stop should be put to this method, which was attended with so many fatal consequences ; and we cannot but think, the putting and voting the main question in the affirmative would have greatly conduced to that end.

2ndly, Because it did not appear necessary at a time when so few men were either granted or demanded, for the service of any one year, that the seamen should be treated with so much severity, as not to be paid off according to the ancient usage of the navy, but kept in floating prisons, as the said Commissioners of the navy very well express it, especially since we find, that during the late wars, when forty thousand men a year were granted, this was truly thought, by the said Commissioners of the navy, a way rather to provoke the seamen to desert, than encourage them to come into or continue in the service, and to be the principal, if not the only reason, why it became so difficult to get them again when wanted.

3rdly, We thought at this juncture, when his Majesty had so lately, in a most gracious speech from the throne, signified his having so happily established peace throughout Europe, it would be proper (if ever) to use our best endeavours that the seamen might partake of the benefit of our mild and free government, and not be liable to greater hardships than any of their fellow-subjects, as we think they will be, if this practice be suffered to continue.

4thly, Because such methods ought to be used as will most contribute to procure the affections of the seamen to the service, which, we think, the ancient usage of the navy will in this case best effect; by which they will have the satisfaction to spend their money within the Kingdom, for the benefit and support of their families, as formerly, when the ships were paid off at their return home from their several voyages, and will, we hope, prevent their absconding from and deserting the service, and engage them cheerfully to enter into it whenever there shall be occasion; whereas, according to the late practice, by the opinion of the said Commissioners of the navy, the difficulty of getting them in the spring chiefly rises from keeping them all the winter, and yet the difficulty of getting them again is assigned as the only reason for keeping them in pay during the winter, although it amounts to an intolerable charge upon the Kingdom, it appearing by one of the papers, now upon the table, that keeping them in pay all the winter comes to near five times as much as raising them again in the spring.

5thly, We cannot but think it a very unusual way of arguing in a House of Parliament, that a question ought not to be put, because it is generally admitted to be true, though at the same time there may be too much reason to believe, that the practice complained of will not be altered without the interposition of Parliament.

6thly, We cannot conceive the treaty with Sweden could make it necessary, as was alleged, to keep the men in pay all the winter, since it appears, by the papers upon the table, that very little or no time would have been lost, if the old method of the navy, of raising them in the spring had been followed, by which much money would have been saved to the public, especially since their so early arrival there did neither prevent landing the Czar's troops upon Sweden, when and where they pleased, nor by any action at sea contribute to weaken his naval strength.

Lastly, We take it to be very clear, that if any necessity or sufficient reason was foreseen at any time for the dispensing with this rule of the navy, it ought not to have been done without his Majesty's consent in council, it being, as we conceive, a fundamental maxim in the government of the navy, and a most essential part of his Majesty's royal prerogative, that no rule or establishment in the navy, whether written or unwritten, and customary, ought to be,

or can regularly be, abrogated, altered, or dispensed with, but by his Majesty's consent in Council, especially in so weighty a point, as spending the public treasure so much faster than it need have been in the proportion above mentioned. And therefore we thought it expedient, that a main question should have been put and voted in the affirmative, that this great and useful prerogative of the Crown might, by censuring what we take to be a breach thereof (though with the temper recommended from the throne) have been the better preserved for the future.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 William North, Lord North and Grey.  
 William Cowper, Earl Cowper.  
 William Gordon, Earl of Aberdeen.  
 Francis North, Lord Guilford.  
 Thomas Trevor, Lord Trevor.  
 James Compton, Lord Compton.  
 John Leveson Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.  
 Henry Paget, Earl of Uxbridge.  
 Samuel Masham, Lord Masham.

## CCVIII.

JANUARY 17, 1722.

By an Act, 8 George I, chapter 6, the Quakers were relieved from the disabilities laid on them by their refusal to take oaths, an affirmation or declaration being substituted in their case for an oath. The Bill came from the House of Commons on the 9th of January. During its progress in the Lords a petition against it was presented by 'the clergy in and about London,' which will be found in the Parliamentary History, vol. vii, p. 942. The petition was presented by the Archbishop of York, and a motion to reject it was carried by 60 to 24. All the Bishops present (20) except the two Archbishops (Wake and Dawes) and the Bishops of Oxford, Lichfield, and Rochester (Chandler, Potter, and Atterbury), were against the petition. The Bishop of Salisbury (Talbot) proposed that the petitioners should have leave to withdraw their petition. This was refused at the instance of Lord Townshend, who commented on the fact that the Archbishop of York was presenting a petition from clergymen who were not in his own diocese.

The following protest was inserted, and the reasons expunged by vote of the 5th of March.

*1st, Because the right of petitioning in a legal manner, to legal purposes, does, we apprehend, appertain, by law and usage, to the free*

*people of this realm, and is as essential to the subject acting, within his due bounds, as the liberty of debate is to the constitution of Parliament; and this right, as it extends to the petitioning even for the repeal of Acts now in force, by which the people think themselves aggrieved, so it justifies them yet more in presenting their humble sense of any new law, while it is under the consideration of Parliament; nor are the clergy, we presume, less privileged in relation to the exercise of this right, than any other of his Majesty's subjects: on the contrary, we believe them as worthy of enjoying it, and as capable of exerting it to wise and good ends, as any rank of private men in the Kingdom.*

*2ndly, Because the petition so rejected is, in our opinion, proper and inoffensive, both as to the matter and manner of it, since it partly relates to the particular rights of the clergy in point of tithes, and partly expresses their fears, as we conceive, not altogether groundless, lest the sect of Quakers, already too numerous, should by this new indulgence be greatly multiplied, and lest the honour of religion should any ways suffer, and the foundations of government be shaken by what is intended, both which it is the particular duty of their function to uphold and secure; we are not therefore apprehensive, that it misbecame their characters to interpose in any of these important points, and the way in which they have done it must seem to us free from exception, till some passage in their petition is pitched upon as obnoxious, and censured by the House, which as yet hath not been done.*

*3rdly, Because the petition suggests a particular grievance, under which the clergy will suffer, by this Act, more than any other order of men, which, as it had never been observed in the debates on the Bill, so was allowed to deserve the consideration of the House; and therefore had there been any other part of their petition less unexceptionable (as we apprehend there is not) yet we do not think it was reasonable to lay aside the whole on that account, and reject what was acknowledged fit to be considered, for the sake of what was thought improper to be offered.*

*4thly, Because the clergy of London are not, in general, so liberally provided for, but that they have reason to be watchful in relation to any step that may unwarily be taken towards diminishing their maintenance, which we look upon as not duly proportioned to their labours in populous parishes, and to the various employments given them by infidels and heretics, papists, and divers sects of men dissenting from the Church*

*established by law, with which this metropolis is known to abound; and as their situation gives them near opportunities of observing and knowing what may be stirred in Parliament, to the prejudice of their order, so we cannot but think, that it becomes them to make use of that advantage in behalf of their distant brethren, as often as need shall require, especially at a time when the representatives of the clergy are not attending in convocation, and in a readiness to exert their known right of applying to the legislature on all such occasions.*

*5thly, Because the London clergy, from whence the petition came, are, in our opinion, and have been always esteemed of great consideration, with respect to their extensive influence, and their ability to be serviceable to the State in important conjunctures; from this body of men have proceeded many of the most eminent lights of the Church, and ornaments of the Bishop's Bench; especially since the Revolution; and, in the reign preceding it, their never-to-be-forgotten labours put a stop to the torrent of popery, then ready to overflow us; on which, and many other accounts, we cannot but wish, that the applications at any time made to this House, by the city clergy, might be received with regard and tenderness, and a more than ordinary indulgence allowed them, at a time when so great favours are about to be bestowed on the professed oppugners of their function and maintenance.*

*6thly, Because, by experience we find, that the treating in this manner a petition from any great and considerable body of men is not the best way to allay the jealousies and extinguish the uneasiness that occasioned it, a very contrary effect having followed (according to the best of our observation) from the rejecting a petition lately offered by the City of London; and the oftener such instances are repeated, the more, we fear, the disaffection of the people will increase, who, thinking themselves under hardships, from which they desire to be relieved, may look upon it as a new and yet greater hardship not to be heard; and though the modest and dutiful demeanor of the clergy should no ways contribute to these consequences, yet we know not how far this may be the case with respect to their flocks, to whom their persons and characters are dear, and who may therefore be induced, by the reverence they bear to their pastors, to express as much concern on their account, as they would on their own: for which reason it was our earnest desire, that this second, and, in our opinion, dangerous experiment, might not have been made.*

Sir William Dawes, Archbishop of York.

William Gordon, Earl of Aberdeen.  
 Henry Paget, Earl of Uxbridge.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Wentworth, Earl of Strafford.  
 William North, Lord North and Grey.  
 John Leveson Gower, Lord Gower.  
 Thomas Coningsby, Earl of Coningsby.  
 Francis North, Lord Guilford.  
 Allen Bathurst, Lord Bathurst.  
 James Compton, Lord Compton.  
 Thomas Trevor, Lord Trevor.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 John Hervey, Earl of Bristol.  
 Thomas Foley, Lord Foley.  
 Robert Benson, Lord Bingley.  
 William Cowper, Earl Cowper.  
 Francis Atterbury, Bishop of Rochester.  
 Rowland St. John, Lord St. John of Bletsoe.

## CCIX.

JANUARY 19, 1722.

The opponents to the Quakers' Bill had attempted to introduce a clause to the effect that the Quakers' affirmation shall not go in any suit at law for tithes, but the proposal was rejected by 52 against 21. The question that the Bill do pass seems to have been carried without a division, but the following protest is entered, the Archbishop of Canterbury and the Bishop of Oxford protesting, but not signing the reasons.

1st, Because the privileges allowed by this Bill, to the Quakers, are without example, and no ways proportioned to the steps formerly taken towards a gradual indulgence of them; for whereas they have been hitherto under the real obligation of an oath, though dispensed with as to some formalities with respect to the manner of wording and taking it, they are now altogether released both from the form and substance of an oath, and admitted to profess fidelity and give testimony upon their simple affirmation; nor are these great privileges indulged to them, as the less were, from time to time, and by degrees, but are at once made perpetual.

2ndly, Because we look upon the Quakers, who reject the two Sacraments of Christ, and are, as far as they so do, unworthy of the name of Christians, to be on that account unworthy also of receiving such distinguishing marks of favour.

3rdly, Because the Quakers, as they renounce the institutions of Christ, so have not given even the evidence by law required of their belief of his Divinity, it no ways appearing to us (nor do we believe it can be made appear) that ever since they were first indulged, 1 William and Mary, one Quaker in an hundred hath subscribed the profession of Christian belief directed by that Act ; nor could we, upon a motion made in the House, prevail, that they should even now be obliged, by such previous subscription, to entitle themselves to the new and extraordinary favours designed them ; the consequence of which must, in our opinion, be, that they will encourage themselves yet farther in their aversion to subscribe that profession of Christian belief, which they seem more to decline than even the taking of an oath, since great numbers of them have sworn, though very few have subscribed that profession ; nor are we without apprehensions, that it may reflect some dis-honour on the Christian faith, if the evidence given by such persons, on their bare word, shall, by law, be judged of equal credit with the solemn oath of an acknowledged Christian and sincere member of the established Communion.

4thly, Because we look upon it as highly unreasonable, that in a Kingdom where the nobles, the clergy, and commons are obliged to swear fealty to the Crown, and even the sovereign himself takes an oath at his coronation, a particular sect of men, who refuse to serve the State either as civil officers or soldiers, should be entirely released from that obligation ; since it is natural to expect, that persons thus indulged, as to the manner and the measure of performing their allegiance, should, by degrees, be induced totally to withdraw it, until they become as bad subjects as Christians.

5thly, Because, though such extraordinary privileges are allowed to the sect of Quakers by this Bill, yet there is no mark or test prescribed by it, or by any other Act, by which it may certainly be known who are Quakers, and consequently who are or are not entitled to those privileges ; from whence this inconvenience may arise, that many not really Quakers may yet shelter themselves under the cover of that name, on purpose to be released from the obligation of oaths ; it not being, we conceive, in the power of the magistrate, as this Bill stands, to oblige any person to take an oath, who at the time of tendering it shall profess himself a Quaker ; so that the concessions now made to that sect may

prove a great inlet to hypocrisy and falsehood, and will naturally tend towards increasing their numbers, which we rather wish may be every day diminished.

6thly, Because we do not apprehend, that the Quakers, as a sect, are really under such scruples in point of an oath, that it is necessary to ease them by such an Act, few of them having for five-and-twenty years past, since their solemn affirmation (equivalent to an oath) was enacted, ever refused to comply with it; and should this have now and then happened, yet when the great body of any sort of sectaries are at ease in their consciences, the scruples of a few, we think, ought not to be regarded, especially if continuing the law now in force will probably extinguish those scruples; and the repeal of it will certainly give new life and strength to them.

7thly, Because the security of the subject's property, which depends upon testimony, seems to us to be lessened by this Act; the reverence of an oath having been always observed to operate farther towards the discovery of truth than any other less solemn form of asseveration; nor can the Quakers be excepted in this case, whose awful apprehensions of an oath appear from their earnest endeavours to decline it; and therefore, where the payment of tithes, by them held to be sinful, is concerned, they will have strong inducements to disguise the truth, in what they simply affirm, rather than wound their consciences and credit, by contributing towards the support of such antichristian payment. In other cases of property, their interest only will clash with their veracity; but the double motive of interest and conscience will influence them with respect to the clergy, whose calling and maintenance they equally condemn.

8thly, Because the inducement mentioned in the Bill towards granting the Quakers those favours, that they are well affected to the Government (a position of which we have some doubt), might, we apprehend, be improved into a reason for granting the like favours to Deists, Arians, Jews, and even to Heathens themselves; all of which may possibly be, some of them certainly are, friends to the Government: however, their friendship, we presume, would be cultivated at too great an expense, if, for the sake of it, any thing should be done by the legislature which might weaken the security of all governments, an oath; and by that means do more mischief to the State in one respect, than it brought advantage in

another: and we the rather thus choose to reason, because an argument was urged in the debate, and no ways disallowed, ‘that if heathens themselves were equally of use to the State, as the Quakers are, they ought also, equally by law, to be indulged;’ whereas our firm persuasion is, that as no man should be persecuted for his opinions, so neither should any man, who is known to avow principles destructive of Christianity, however useful he may otherwise be to the State, be encouraged by a law, made purposely in his favour, to continue in those principles.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 William Gordon, Earl of Aberdeen.  
 Francis Atterbury, Bishop of Rochester.  
 Francis Gastrell, Bishop of Chester.  
 John Leveson Gower, Lord Gower.  
 Thomas Trevor, Lord Trevor.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Rowland St. John, Lord St. John of Bletsoe.  
 James Compton, Lord Compton.  
 James Cecil, Earl of Salisbury.

## CCX.

JANUARY 25, 1722.

The opposition in the House of Lords was still anxious to discredit the Ministry by dwelling on the scandals which had arisen through the magnitude of the Navy Debt, and with this object they moved for ‘authentic copies of the several treaties, instructions, and orders relating to the British squadrons being sent into the Baltic for several years last past,’ in order to show at once the origin of the debt, and to meet the statement ‘that the Act of Settlement has not been infringed by those several northern expeditions.’ The motion seems to have been made by Lord Bathurst. It was rejected by 60 to 23. The treaties referred to appear to be those found in Almon’s first vol., pp. 345, 353, which were made subsequently to the death of Charles XII. By the former of these the duchies of Bremen and Verden were secured to George I, as Elector and Duke of Brunswick, and by the latter the Queen of Sweden is assured of assistance in money and men during her war with the Czar.

The following protest is inserted on the rejection of the motion.

1st, Because it being now admitted by the House, in the instruction given to the Committee, that the Navy debt was increased by employing more men in the sea-service yearly than were provided for by Parliament, and by the not paying them off in the winter; the intention of the House in that instruction must, in our opinion,

manifestly be to direct the Committee to enquire into the true occasion and reasonableness of those services, by which the Navy debt was increased; and that end could not, we think, be any ways attained without a sight of those treaties, instructions, and orders, upon which those services were founded, since the considering the occasion of an extraordinary acknowledged expense must, we conceive, imply an enquiry into the true causes for which such an expense was made; we did therefore think it necessary to desire copies of the treaties, instructions and orders, relating to the several Baltic expeditions, because without them we could not possibly learn the true reasons of those expeditions; and it seemed to us incongruous that the House should direct an enquiry, and not contribute to it, by directing also those materials to be laid before the Committee, which alone could render such an enquiry effectual.

2ndly, Because the want of such authentic papers and instructions could no ways, we think, be supplied by any verbal representations that might be made by Lords in the Ministry, as facts occurred to their memory in the debate; this being no sufficient foundation for any Parliamentary enquiry, much less for such a one as tends to approve, excuse, or blame the measures of those in power, since we cannot think it suitable either to the rules of reason, or the dignity of this House, to proceed to resolutions relating to the conduct of Ministers upon facts stated by the Ministers themselves.

3rdly, Because motions for such papers and instruments have been frequently made and complied with, nor hath any such motion ever (as far as we can learn) till of late been refused. The only paper included in the general motion, that we thought any ways doubtful whether we should obtain, was the Lord Carteret's instructions, which was moved for before, in this Session, without success; however, we had hopes of prevailing even for a sight of that paper, when it became necessary, as we apprehend, to qualify the Committee of the whole House to do the work appointed by the House.

4thly, Because the great increase of the Navy debt arose from the frequent sending of strong squadrons to the Baltic, and continuing them there at seasons of the year when the British fleet has seldom been known to be employed so far from home, and in

so rugged a climate ; and therefore we thought it reasonable to expect the fullest satisfaction in our enquiries into the grounds of expeditions, which had been carried on in so unusual, expensive, and hazardous a manner ; which the more extraordinary they were, the more they needed, in every respect, to be cleared and justified, that the misapprehensions prevailing without doors, in relation to those northern transactions, might be rectified, and such precedents might not remain without the reasons on which they were founded ; whereas we are now apprehensive, that any resolutions on this head may lose much of their weight and influence should they be known to have been framed upon facts barely asserted by Ministers, without evidence of any sort to prove the truth of those facts.

5thly, Because one great view we had in our motion for those papers, was to satisfy ourselves and others, that the Act of Settlement had been no ways infringed by those northern expeditions, a point of the utmost consequence to the present establishment, and on which therefore all our care and circumspection ought to be employed. It is the birth-right of the peerage, as to concur in the enacting all laws, so to enquire into the observation of them ; and the more momentous the law is, the more it becomes us to consider, how far it hath or hath not been violated ; and one great inducement to our enquiry into the observation of that law was the jealousy entertained (as we conceive) on that head by many of his Majesty's good subjects, observing that the war in the north ended at last in a peace, which stripped Sweden of all its best provinces, and confirmed the acquisition of them to the several northern powers concerned, without any particular advantage, that we hear of, stipulated in behalf of Great Britain, besides that of a new guaranty for the Protestant Succession. A sight of the said treaties, instructions, and orders, might perhaps have dispelled these apprehensions ; and therefore we thought it our duty to move for them, and to express our concern that such a motion was over-ruled ; for we cannot think the argument used to discourage us from insisting on that motion (that it amounted to an enquiry, whether the King had broke his coronation-oath) was consistent with the freedom of Parliamentary debates, or agreeable to the known rules of our constitution, which free the Crown from all blame, and suppose those only who give pernicious counsels answerable for the fatal effects of them.

Sir William Dawes, Archbishop of York.  
 Heneage Finch, Earl of Aylesford.  
 Nicholas Lke, Earl of Scarsdale.  
 James Compton, Lord Compton.  
 John Hervey, Earl of Bristol.  
 Thomas Wentworth, Earl of Strafford.  
 William North, Lord North and Grey.  
 Francis Gastrell, Bishop of Chester.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 Charles Butler, Lord Weston (Earl of Arran).  
 William Gordon, Earl of Aberdeen.  
 William Cowper, Earl Cowper.  
 Francis Atterbury, Bishop of Rochester.  
 John Leveson Gower, Lord Gower.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Allen Bathurst, Lord Bathurst.  
 Francis North, Lord Guilford.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Robert Benson, Lord Bingley.  
 Thomas Trevor, Lord Trevor.

## CCXI.

JANUARY 25, 1722.

The Committee of the Lords reported two resolutions on the Navy Debt. The first was in the following terms, ‘That it is the opinion of this Committee, that the employing great numbers of seamen for several years last past, more than were provided for by Parliament, and thereby increasing the debt of the Navy, was occasioned by services which either were pursuant to the previous advice, or had the subsequent approbation of one or both Houses of Parliament, and which were also necessary for the safety of the Kingdom and the tranquility of Europe.’ The resolution appears to have been carried without a division.

The following protest is inserted.

1st, Because this resolution seems to clash with the instruction from whence it sprung, which was to consider the occasion of the increase of the Navy debt, that arose from employing more men in the sea-service than were provided for by Parliament; whereas from the resolution it appears only, that the services occasioned the debt, not what real occasion or reason there was for those services, which yet was the point we suppose chiefly in view, and most worthy of a Parliamentary inquiry.

2ndly, Because those services are, in this resolution, supposed to

be justified by the previous advice or subsequent approbation of one or both Houses of Parliament; whereas it did not any way appear to us that either House of Parliament had previously advised, or subsequently approved such services, though the vouchers in that respect were often and earnestly required; nor doth it appear to us, how that assertion is warranted, either by general expressions in votes and addresses, or by a state of the Navy debt communicated every year to the Parliament; and therefore being still in the dark, as to the evidence pointed at, we could wish that the growth of the Navy debt had been explained and justified by an inquiry into the ends and reasons for which it was contracted. But this way not being taken, nor being possible to be taken till the treaties, instructions and orders, requisite to this purpose are produced, we know not in what sense either those sea-services, or that great Navy debt they caused, may be said to have been approved by this or the other House of Parliament.

3rdly, But had we been duly informed of the true motives upon which those services were undertaken, and thereby enabled to judge of their reasonableness (as, we think, we in no degree were), yet still we must be of opinion, that those considerations, how important soever, would not have justified the exceeding the number of men asked of and allowed by Parliament, which nothing but absolute and unforeseen necessity can ever excuse; whereas the occasions of these extraordinary expenses were foreseen, and the fleets were sent out for many years successively sitting the Parliament, without any previous demands made of such supplies as were proportioned to the expense intended. And we are further of opinion, that whenever such a debt is unavoidably incurred, it should be especially stated to the Parliament, together with the necessity that occasioned it, at their next assembling, that the excuse may be then either allowed or censured, and the exceedings provided for in time, instead of being suffered to run on for many years together, till an insupportable debt is contracted, without any other notice taken of the reason of its growth, than the laying annually a general state of the debt on the table of the House of Commons. This we conceive to have been the case; and, if it be, do not err, we think, in affirming, that had the services appeared to have been necessary, yet this manner of increasing the debt would not have been warranted.

4thly, Neither can we apprehend, how the safety of the Kingdom depended upon those extraordinary services, some of which were performed in the Mediterranean, others in the Baltic, against powers not at enmity with Great Britain, whose friendship (it seems to us) we should rather have cultivated, and whose resentments we had, and still have (we fear) reason to apprehend. We cannot but think it the true interest of Great Britain to intermeddle as little as is possible in the quarrels of Europe; and then, by our good offices chiefly, without declaring any resolution to support our mediation by force, or making ourselves either principals or parties in wars that do not immediately concern us. We look upon our Navy (the natural security of our island) as too much hazarded, and some chief branches of our trade as highly endangered, by the consequences of those remote expeditions; nor are we yet satisfied, that the peace by us mediated and concluded in the north, hath not made the provision of naval stores for our fleet more precarious than formerly, though on that single article the safety of the Kingdom may possibly depend; nor can we judge the present tranquility likely to last, since, after all our expense, the late northern peace hath reduced Sweden so low, and left the Czar in the possession of such provinces as may render him very formidable; and what matters may still remain unadjusted in treaties, whereby the tranquility may soon be disturbed, we cannot determine, since we have not been indulged in our desire of inspecting those treaties.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
Nicholas Leke, Earl of Scarsdale.  
William Cowper, Earl Cowper.  
John Hervey, Earl of Bristol.  
John Leveson Gower, Lord Gower.  
Thomas Trevor, Lord Trevor.  
Heneage Finch, Earl of Aylesford.  
Francis Gastrell, Bishop of Chester.  
William North, Lord North and Grey.  
Francis North, Lord Guilford.  
Charles Butler, Lord Weston (Earl of Arran).  
William Gordon, Earl of Aberdeen.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Thomas Foley, Lord Foley.  
James Compton, Lord Compton.  
Francis Atterbury, Bishop of Rochester.

Rowland St. John, Lord St. John of Bletsoe.  
 Henry Paget, Earl of Uxbridge.  
 Allen Bathurst, Lord Bathurst.  
 Robert Benson, Lord Bingley.

## CCXII.

JANUARY 25, 1722.

The second resolution was as follows, ‘That it is the opinion of this Committee, that the nature of the said services necessarily requiring some of his Majesty’s squadrons to be kept out the whole year, and detaining others abroad till the months of November or December; and it being requisite to fit out the said squadrons in the month of February, or the beginning of March, in order to their failing early in the spring, the paying them off, upon their return, was inconsistent with the due performance of those services, nor could the saving (if any) by such payment have in any degree made amends for the ill consequences which must thereby have arisen from the disappointment to the service.’

The protest is as follows.

1st, Because that part of the question which concerns such of his Majesty’s ships as are said, but not proved, to have been necessarily kept out the whole year has not the least relation, as we conceive, to anything that has been yet objected to, which was, the not paying ships that came home before the winter, and ought by the ancient usage of the Navy to have been paid off; and therefore we cannot but think was very improperly made part of the question.

2ndly, Because it being admitted in the question, that the ancient usage of the Navy was, that all ships, when they returned home from their several voyages, should not be kept in pay during the winter (as was the case of the late Baltic squadrons for some years past) and it not having been made appear, as we think, in a Parliamentary way, that by any treaty with Sweden it was necessary to send ships sooner in any year than might have been consistent with the said ancient usage; we are of opinion, that the resolution will encourage the practice complained of, and will greatly contribute to make fleets (so much to the honour and security of this Kingdom) too chargeable to be supported.

3rdly, Because we cannot but be surprised, there should be the least doubt (as in the question) whether any money might have been saved by paying off the men, when it appears by a paper upon the table, that several ships’ companies, amounting to many thousands of men, have been kept in pay during the winter; which

expense, we cannot but think, ought to have been avoided, it appearing from other papers and representations upon the table, that by paying the men off, more than five parts in six of the whole charge of those men during the winter had been saved to the public.

4thly, Because a resolution of this House, that seems to countenance a practice of this sort (at a time when every way of getting money at the expense of the public is not found to be less in people's thoughts than formerly) may probably encourage those, who shall have opportunity in future times too readily to contribute towards the increase of Navy debts, though they are attended with so many ill consequences, that his Majesty, in a most gracious speech from the throne, has very lately been pleased to say, they do not only affect all public credit, but greatly increase the charge and expense of the current service, and are of all others the most heavy and burthensome.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 Francis North, Lord Guilford.  
 Francis Gastrell, Bishop of Chester.  
 William Cowper, Earl Cowper.  
 Heneage Finch, Earl of Aylesford.  
 John Leveson Gower, Lord Gower.  
 Francis Atterbury, Bishop of Rochester.  
 James Compton, Lord Compton.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Henry Paget, Earl of Uxbridge.  
 John Hervey, Earl of Bristol.  
 William Gordon, Earl of Aberdeen.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Thomas Foley, Lord Foley.  
 Nicholas Leke, Earl of Scarsdale.  
 William North, Lord North and Grey.  
 Thomas Trevor, Lord Trevor.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Allen Bathurst, Lord Bathurst.

### CCXIII.

FEBRUARY 1, 1722.

The opposition again returned to the attack on the 1st of February. The Earl of Uxbridge moved the reading of certain accounts and papers. He then contended by the evidence derived from these papers, that the increase of the debt was partly due to the practice of victualling the ships

abroad by the commanders, and not by the proper officers of the victualing office, who constitute a check on the commanders ; and he alleged that the commanders had charged the Government with a sum in excess of that which the provisions cost. This was denied by Lord Torrington, who stated that provisions were much dearer in the Mediterranean than in England. A motion made by Lord Uxbridge embodying the assertions which he had made was negatived without a division, and the following protest was inserted.

1st, Because it being unquestionably the ancient course of the Navy to victual all his Majesty's ships by the Commissioners of the Victualling, or their agents, unless in case of necessity ; and it appearing to us, by a paper returned before this House from the Victualling Office, that many ships, and squadrons of ships, have of late years been victualled by the commanders, very few of which were so victualled by any order, and amongst those many instances a few only were excused, because there were no agents for the Victualling Office, nor any stores in the places where the ships then were ; we think it reasonable to conclude, that all the several victuallings in the said paper contained, being much the greater number, which were neither excused therein, nor said to be ordered, were so provided without any order or excuse whatsoever ; and consequently were a needless breach of the said good course of the Navy, and by taking away the proper check made to save the public money must, in our opinion, necessarily have been one of the occasions of the increase of the Navy debt.

2ndly, We cannot but observe, that if the said excuse had (in the paper above mentioned) been applied to all the several instances there of victualling, in a manner contrary to the course of the Navy, yet it had been insufficient, since it is not alleged, that agents for the victualling and stores might not have been timely had in the places where the ships were victualled, if due notice had been given to the Commissioners of the victualling, and proper precautions and endeavours had been used to that end.

3rdly, We cannot but think, that carrying this question in the negative will undoubtedly encourage this breach of the course of the Navy, as it is acknowledged to be, and in consequence put it into the power of every admiral or commander-in-chief of any squadron, and every commander of a particular ship, not only to furnish such provisions, both in quantity and quality, as they shall think fit, but by letting the men go on shore, when in port, on

pretence of supplying provisions, leave a charge on the public for want of the proper check, though to the detriment of the sea-service.

4thly, Because by this leave given to the commanders on the head of victualling, they have it in their power (through the want of the said true and ancient check) to bring a very great charge upon the head of wages, which must undoubtedly, as we apprehend, occasion a great waste of the public treasure, and consequently an increase of the Navy debt.

5thly, Because, we think, that to suppose the commander of any squadron or ship will not, when it is so entirely in his power, do what shall be for his interest, is to believe him less inclined to his interest, than the generality of his fellow-subjects on shore.

6thly, Because, we believe, if this House will not discourage taking away proper checks till proof had (as urged in the debate) of what had been got by individuals for want of those checks, the delay and difficulties attending such an inquiry will probably hinder any discouragement being given to such practices, which are allowed to be contrary to the standing instructions to the Commissioners of the victualling, and to the commanders of his Majesty's ships.

Sir William Dawes, Archbishop of York.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Wentworth, Earl of Strafford.  
 George Henry Lee, Earl of Lichfield.  
 John Hervey, Earl of Bristol.  
 Francis North, Lord Guilford.  
 William North, Lord North and Grey.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Trevor, Lord Trevor.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Heneage Finch, Earl of Aylesford.  
 William Craven, Lord Craven.  
 William Cowper, Earl Cowper.  
 James Compton, Lord Compton.  
 Henry Paget, Earl of Uxbridge.  
 Allen Bathurst, Lord Bathurst.  
 Robert Benson, Lord Bingley.

#### CCXIV.

FEBRUARY 3, 1722.

The Lords were kept long waiting for the arrival of the Chancellor, Lord Macclesfield, who was in attendance on the King. He had neglected

to send for Chief Justice King, C.P. (afterwards Lord King, and Chancellor in 1725, after Macclesfield's disgrace), who had been appointed Speaker of the Lords, by letters patent, during the Chancellor's absence. When Macclesfield arrived, he apologised for the delay, stating that he had been detained by the King's commands 'longer than he could foresee.' As it was nearly three o'clock a motion was made to adjourn, which was negatived by 49 to 31. On this the following protest was entered. It may be added that a motion was made that the Duke of Somerset, and next that the Duke of Kingston, should take the chair. They avoided the matter by leaving the House, and the Lords were debating on choosing Lord Lechmere, when the Chancellor came in.

1st, Because the House standing adjourned to this day at eleven o'clock, and a great number of Lords being met, and expecting the coming of their Speaker till near three o'clock, they seemed to us generally to resent this usage, and without any dissent, that we could perceive, proceeded, according to the standing order of this House, towards choosing a Speaker; but meeting with some difficulties as to the persons nominated, the Lord Chancellor came before any choice made; and as soon as the House was sat, the Lord Chancellor alleged, as the reason of his long absence, 'That he had been summoned to attend his Majesty at St. James's, where the business had lasted much longer than was expected;' which excuse, though it might in great measure free the Lord Chancellor from the imputation of wilful neglect of duty, yet it seemed to us in no degree to justify the indignity which we think was on the whole matter done to the House, which is undoubtedly the greatest council in the Kingdom, to which all other councils ought to give way, and not that to any other; and therefore the business of any other council ought not to have detained the Speaker of this House after the hour appointed for its meeting, and during the time of the day the House has usually of late spent in business; and therefore we thought the least resentment the House could shew on this occasion, to prevent its being used so for the future, was to adjourn without entering on any business; and this the rather, because we foresaw it could not obstruct any public affairs, since the time was so far spent, as that no business of consequence could well have been gone through with effect, though entered upon.

2ndly, As we may venture to say, That the dignity of this House has not been of late years increasing, so we are unwilling that any thing we conceive to be a gross neglect of it, should pass without some note on our records, that we were sensible of such

neglect, and did not approve it; which we thought would have been in some measure attained by an immediate adjournment, nor was any other method proposed; and since that could not be effected, we enter this dissent, with our reasons, that it may appear to posterity we were zealous to withstand, in the manner proposed, the further progress of a practice so injurious, as we conceive, to the honour and authority of this supreme council.

Sir William Dawes, Archbishop of York.  
 Charles Seymour, Duke of Somerset.  
 George Henry Lee, Earl of Lichfield.  
 Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Trevor, Lord Trevor.  
 John Hervey, Earl of Bristol.  
 Francis Gastrell, Bishop of Chester.  
 Henry Paget, Earl of Uxbridge.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Francis North, Lord Guilford.  
 William North, Lord North and Grey.  
 Allen Bathurst, Lord Bathurst.  
 William Craven, Lord Craven.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 John Ashburnham, Lord Ashburnham.  
 James Compton, Lord Compton.  
 Thomas Foley, Lord Foley.  
 Henry Maynard, Lord Maynard.  
 William Gordon, Earl of Aberdeen.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Peregrine Hyde Osborne, Lord Osborne.  
 Rowland St. John, Lord St. John of Bletsoe.  
 William Cowper, Earl Cowper.  
 Robert Benson, Lord Bingley.

## CCXV.

FEBRUARY 13, 1722.

The Bill entitled ‘an Act for better securing the freedom of elections of Members to serve for the Commons in Parliament’ was brought into the Lords from the Commons by Mr. Pitt (Member for Old Sarum) and others on the 8th of February. A speech delivered by Mr. Hutcheson (Member for Hastings) on the motion for committing the Bill in the House of Commons is to be found in Hansard’s Parliamentary History, vol. vii. p. 948. It contains the arguments of the country party in favour of enacting strict qualification clauses, of the exclusion of official personages from voting at elections, and of controlling the influence of the services. On the second reading in the Lords, the Bill was rejected by 57 to 38.

The following protest was inserted, which was expunged by 55 to 22, on the 19th of February.

*1st, Because the methods of corruption made use of in elections, and now grown to an height beyond the example of preceding times, are, of all others, the greatest blemish to our constitution, and must, if not remedied, prove fatal to it; and did therefore chiefly deserve, as they can only admit of, a parliamentary cure.*

*2ndly, Because the Commons, who are the best qualified to judge of the growth of this evil, and to point out proper remedies for it, having sent up a Bill complaining of the one, and desiring our assistance in the other, it was not, we apprehend, suitable to the dignity and wisdom of this House, to reject such a Bill, without entering into a free discussion of the particulars of which it consisted, and thereby to give an handle for reflections without doors, as if we had shown a less degree of zeal against the corruptions complained of, than those from whose elections it sprung; our opinion is, that we should rather have taken this favourable opportunity of joining our endeavours with theirs, towards the cure of this evil, than have made ourselves liable to objections for refusing to attempt it, even after such an encouraging step taken by the House of Commons.*

*3rdly, Because a law against corruption, though always desirable, is yet particularly seasonable and necessary at such a juncture as this, when new elections of members are coming on, and the Parliament for which they shall (by what methods soever) be chosen, may continue for seven years; and, we think, the Lords are the more concerned to obviate the ill consequences of such a choice, because the Septennial Act, which made so remarkable a change in our constitution, had its rise in this House.*

*4thly, Because we are persuaded, that by the terror of the penalties contained in this Bill, which were to have operated soon after it had passed into a law, a mighty check would have been given to the growth of corruption, though it should not have been absolutely cured; and we are confirmed in this opinion, by what we have heard and believe, that while the Bill was depending in Parliament, and the fate of it unknown, the impious practices at which it was levelled were in some measure suspended; and should a further stop have been put to corruption and bribery, at the approaching elections, by passing this Bill, such a degree of success might have given the legislature hopes of an entire suppression of it.*

*5thly, Because supposing this Bill to have been defective in some respects, and not well adjusted in others, to the end designed (a supposition made but not admitted by us) yet the true way of supplying all these defects, and making all proper alterations, would have been by committing the Bill, and not by rejecting it. In other cases, where a Bill of public concern is laid aside by the House, they can easily make amends for that loss by bringing in a new one, which may more effectually answer the good ends proposed; whereas in this case there is neither time sufficient for repeating the attempt, nor can any Bill of this kind be ever begun in this House with any reasonable prospect of success.*

*6thly, Because the intention of many chief clauses in the Bill, is to provide for the more effectual execution of laws already made to secure the freedom of elections, but hitherto evaded for want of such provisions; and we know not that any argument hath been or can be used against passing such parts of this Bill into a law, but what may with equal or greater strength be urged for repealing those laws which yet are held sacred and inviolable.*

*7thly, Because several oaths are, by laws now in being, required to qualify electors, and the oaths enjoined by this Bill are intended only to strengthen the obligations under which such electors do, by the known rules of our constitution, already lie; nor are these oaths attended with any new hardship or difficulty, since they relate only to plain matters of facts, which are certainly known to the electors themselves, and which they will be ready to attest with all solemnity, if they are conscious of their own innocence; and if they are not, the legal punishment of perjury to which they are subjected is light, in comparison of the heinous nature of their offence, and the mischievous consequences of it.*

*8thly, Because that part of the Bill, which forbids the issuing of public money towards influencing elections, relates to a method of corruption, which, of all others, ought the most carefully to be guarded against, and yet was admitted in the debate to have been frequently practised; and therefore we cannot but wish, that this Bill had been passed into a law for the sake of that clause, which would have hindered what was given for the security of subjects' rights, and the safety of the Kingdom, from being ever employed to the destruction of both: an example, if thus set by men in high offices and stations, which cannot fail of spreading its influence through all ranks and orders of men, and pro-*

*curing impunity and applause for such practices, as all true lovers of their country must wish might be universally detested and punished.*

*9thly, Because we cannot understand, how the objection made to this Bill (that it removes foundations) can, with any colour of reason, be supported; on the contrary, we think, that the whole design of it is to recover our old constitution, and resettle it on those firm foundations from which it has been removed, ever since bribery has been made an usual inlet to Parliament, and that dangerous traffic has been carried on between the electors and the elected, which has undermined the virtuous principles, and may prove fatal to the liberties of the free people of this realm.*

*10thly, Because another argument insisted on in prejudice of the Bill, That it would give the House of Commons greater latitude in deciding disputed elections, seems to us to be equally groundless; for the penalties intended to be enacted by this Bill are to take place only upon prosecutions in the ordinary courts of justice, and cannot come under the cognizance, or be inflicted by the authority of the House of Commons; nor can the courts below be checked in their proceedings on this head by the determinations of that House, with which the methods of punishing corruption, prescribed by this Bill, do not in the least interfere: what therefore was alleged in the debate can by no means be allowed, that while the Commons are the sole judges of elections, it is in vain to think of restraining the corruption of electors, since the methods here prescribed are such, as either operate upon the conscience, or will, in the common course of law, execute themselves; and though they may be forwarded, yet cannot be frustrated by the intervention of an House of Commons.*

*11thly, Because, as the passing this Bill would have been attended with no inconveniences to the public, so great mischiefs may, we apprehend, ensue upon the rejecting it: the honour of this House may suffer on that account, and corruption of all sorts will, we fear, receive new life and encouragement; it being a matter of daily and certain observation, that whenever a Bill is brought into Parliament to redress any great disorders in the state, any discountenance given to such a Bill will always countenance and increase such disorders, and make them less capable of a remedy in succeeding times, especially when it shall be affirmed in the debate, that all Bills of this kind do more mischief than good; which way of reasoning, should it prevail, will effectually prevent*

*all future attempts towards curing this great evil, and preserving the constitution of Parliaments.*

Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 Henry Grey, Duke of Kent.  
 James Cecil, Earl of Salisbury.  
 John Hervey, Earl of Bristol.  
 Francis North, Lord Guilford.  
 William North, Lord North and Grey.  
 William Cowper, Earl Cowper.  
 George Henry Lee, Earl of Lichfield.  
 William Gordon, Earl of Aberdeen.  
 William Craven, Lord Craven.  
 Henry Maynard, Lord Maynard.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 Henry Paget, Earl of Uxbridge.  
 Francis Gastrell, Bishop of Chester.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Heneage Finch, Earl of Aylesford.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Charles Butler, Lord Weston (Earl of Arran).  
 Samuel Masham, Lord Masham.  
 James Compton, Lord Compton.  
 Robert Benson, Lord Bingley.  
 Thomas Foley, Lord Foley.  
 Thomas Trevor, Lord Trevor.  
 Allen Bathurst, Lord Bathurst.  
 Francis Atterbury, Bishop of Rochester.

The clause in the eighth reason was inserted, it appears, in consequence of a statement of the Earl of Sunderland to the effect that in former reigns money had been issued from the Treasury, or even remitted from France, for the purpose of promoting the election of persons in the Court interest. The Earl of Sunderland said, therefore, on the 19th, that the construction which had been put on his words was 'an intolerable abuse,' that the privilege of protesting was carried beyond its legitimate limits, and that 'protests even against Acts of Parliaments were printed, handed about in coffee houses, and distributed over the Kingdom, in order to inflame the minds of the people against the Administration.' After a sharp debate, the Duke of Newcastle moved that the protestation be read, and be expunged.

## CCXVI.

FEBRUARY 19, 1722.

The following protest is entered in consequence of the vote expunging the previous protest of the 13th of February. The precedent alluded to seems to be that of the 7th of June, 1712.

1st, Because we are of opinion, that the reasons expunged were, both as to the matter and form of them, agreeable to precedents in former Parliaments, still remaining on the Journals uncensured by the House.

2ndly, Because we were very desirous that the arguments contained in those reasons against bribery and corruption in elections, and our zeal for obtaining such remedies as were proposed by the Commons themselves, might appear to posterity as fully and particularly as possible.

3rdly, Because as the practice of expunging reasons is not ancient, so the method taken upon this occasion, of expunging many reasons of various kinds by one general question, is (we conceive) unreasonable in itself, and is countenanced but by one precedent on our books.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 George Henry Lee, Earl of Lichfield.  
 Heneage Finch, Earl of Aylesford.  
 William North, Lord North and Grey.  
 William Cowper, Earl Cowper.  
 Francis Gastrell, Bishop of Chester.  
 William Gordon, Earl of Aberdeen.  
 Henry Maynard, Lord Maynard.  
 Francis North, Lord Guilford.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Ashburnham, Lord Ashburnham.  
 Francis Atterbury, Bishop of Rochester.  
 Thomas Foley, Lord Foley.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Allen Bathurst, Lord Bathurst.  
 James Compton, Lord Compton.  
 Henry Paget, Earl of Uxbridge.  
 Robert Benson, Lord Bingley.

## CCXVII.

FEBRUARY 19, 1722.

One of the orders of the day was that the House should go into Committee for the purpose of 'taking into further consideration the causes of contracting so large a Navy Debt.' A motion, however, was made 'that the House should be put into Committee that day three weeks,' that is, that the question should not be considered at all, as

the Parliament was on the point of dissolution, and was actually dissolved on the 10th of March, after prorogation on the 7th. The Speaker made an allusion to the Debt in his speech to the King on the 7th of March. The following protest was inserted, but the passage after the words 'proceeded upon were specified' was expunged by order of the 3rd of March.

1st, Because the putting off the further consideration of the causes of the Navy debt to so distant a day, after so long an adjournment of the same matter already had, is, as we conceive, not only a discouragement and delay, but, as the Session may happen to end, will totally prevent (at least during this Session) that inquiry, which, as we apprehend, would greatly have tended to the public good, in hindering so large a Navy debt from being contracted for the future.

2ndly, Although the said inquiry has been a great while depending, yet a very few days only, it appears by the Journal, have been allowed for it, and one of those was employed in reviewing two questions, which were at first kept from being put by previous questions; and therefore, we conceive, a few days more ought not to have been denied, for the looking into a matter of so very great importance to the public.

3rdly, We apprehend, that all matters properly brought before either House of Parliament, especially inquiries into mismanagements of the public business, ought, if the time will allow it, to be freely and fully discussed and determined one way or other, and ought not to be kept off from coming to any determination, by one long adjournment after another, till the Session be ended.

4thly, Because it was alleged in the debate, as a reason against so long an adjournment, That the subject-matter of the inquiry was not near exhausted; that the points already considered and determined had no relation to those proposed to be considered in the further inquiry; and consequently the determination of the former could in no degree prejudice the latter, or make the going upon them needless or improper; and to evince this, several of the particulars designed to have been proceeded upon were specified; as,

*That it appeared by extracts of several letters on the table, especially by a letter from the Navy-board, dated the 13th of February, 1701, that the practice of turning over companies, or part of companies, from one ship to another, without their officers, was a charge to the Crown,*

*by confounding accounts, and otherwise, as well as disgusting to the seamen.*

*That by other papers before the House, it appeared, that several squadrons have gone out of late without muster-masters, whose office and duty is to detect frauds in pay and on the head of victualling.*

*That in the year 1720, two thousand two hundred and one men were employed in the yards more than in the year 1714, and two thousand six hundred and twenty-seven men more than in the year 1698, and that the wages of those men have of late been greatly increased; both which, for aught appeared to us, are an unaccountable increase of that charge to the public.*

*That since the year 1714, many new captains and lieutenants had been made, while great numbers have been kept in half-pay and unemployed, besides those created on vacancies which happened while the ships were abroad, and by that means an unnecessary charge has been continued on the public, and the elder officers disengaged.*

*That without any order or establishment by his Majesty in council, pay has been allowed, contrary to the usage of the Navy, to flag-officers at home during the winter, on pretence of their making a journey or two to see their squadrons equipped.*

*That without such order or establishment of his Majesty in council, captains and commanders of small numbers of ships have been paid as rear-admirals, on pretence of having captains under them, and in but one instance, that we could observe, a reason given why they had captains under them, unless it was to colour their having such pay.*

*And we are well assured, that, on further inquiry, it will appear that new lieutenants have been made abroad, and old ones, fit to serve, sent home to be put in half-pay.*

*That flags have been paid in double and treble capacities.*

*That flags and other officers have been paid as in higher stations than those they served in.*

*That two or three flags of the same sort have been paid at the same time.*

*That retrospections of pay have been allowed to flags and other officers.*

*All which being against the ancient economy of the Navy, and wasteful of the public treasure, we think, should have been inquired into without loss of time.*

*These mismanagements, as we take them to be, and others which might have appeared on further consideration of this matter, contributing, as we apprehend, to waste the public treasure, must necessarily have been, in a great degree, an occasion of contracting so large a Navy-debt; and therefore we are of opinion, that one or more further days, which would probably have fallen within this Session, should have been appointed for the taking them into consideration; which not being done, we the rather enter this protest with our reasons, as what, we hope, may give an occasion to the resuming the thoughts of this matter in another Session of Parliament.*

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 John Hervey, Earl of Bristol.  
 Thomas Foley, Lord Foley.  
 William Cowper, Earl Cowper.  
 William North, Lord North and Grey.  
 Francis Atterbury, Bishop of Rochester.  
 Francis Gastrell, Bishop of Chester.  
 James Compton, Lord Compton.  
 Heneage Finch, Earl of Aylesford.  
 John Ashburnham, Lord Ashburnham.  
 William Gordon, Earl of Aberdeen.  
 Allen Bathurst, Lord Bathurst.  
 Francis North, Lord Guilford.  
 Henry Paget, Earl of Uxbridge.  
 Robert Benson, Lord Bingley.

## CCXVIII.

FEBRUARY 20, 1722.

On this day, the Lords debated the state of the National Debt, and a paper giving the amounts of the Debt at the conclusion of each year (on the 3rd of December), from 1717 to 1720 inclusive, was presented to the House by the King's command, with an account of the sums devoted towards the extinction or sinking of the Debt. On this Lord Cowper moved, 'That it appears by the state of the public Debt before this House, that the same (exclusive of the Debt of the Navy) is increased, between the 31st of December, 1717, and the 31st of December, 1720, to at least the sum of £2,300,000, notwithstanding that the sinking-fund hath produced within that time £1,910,385 14s. 6*2d*.' The motion was vigorously opposed by Lords Carteret and Townshend, the Earls of Ilay, Sunderland, and Scarborough, and the Bishop of Salisbury, and negatived by 50 to 23. Carteret and Townshend were the Secretaries

of State, and Sunderland had just given way to Walpole. Lord Illy was the Scotch Privy Seal.

The following protest was inserted, but expunged by order of the 3rd of March.

*Because the question consisted wholly of matters of fact, which were exactly agreeable to a paper laid before the House by the proper officer on the address of this House; and as it is not reasonable to be presumed, that the officers of the Crown would state the debt higher than it really was, so (we cannot but think) nothing was alleged in the debate that made it appear the debt was less than stated in the question; but on the contrary, had the exact quantum of the debt been material to have been inquired into on this occasion, it was evident to us, even from a memorandum at the bottom of the same paper, that the debt was, in reality, much higher the 31st of December, 1720, than stated in the question.*

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 William North, Lord North and Grey.  
 John Hervey Earl of Bristol.  
 Francis North, Lord Guilford.  
 William Cowper, Earl Cowper.  
 Francis Gastrell, Bishop of Chester.  
 Allen Bathurst, Lord Bathurst.  
 William Gordon, Earl of Aberdeen.  
 Thomas Foley, Lord Foley.  
 Charles Butler, Lord Weston (Earl of Arran).  
 John Ashburnham, Lord Ashburnham.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 James Compton, Lord Compton.  
 George Henry Lee, Earl of Lichfield.  
 Francis Atterbury, Bishop of Rochester.  
 Henry Paget, Earl of Uxbridge.  
 Charles Boyle, Lord Boyle (Earl of Orrery).

### CCIX.

FEBRUARY 20, 1722.

A motion was made that the lessening the public debt annually by all proper methods, is necessary to the restoring and preserving the public credit. The question whether the said question be now put was negatived, apparently, without a division.

The following protest was inserted.

1st, Because as the main question is undeniably true, and seems to us admitted to be so, by its being prevented to be put by the

previous question, so we think it would have been highly expedient and useful to the public to have had it put and voted in the affirmative, that by the declared opinion of this House (which must always be of the greatest authority) those who are more immediately concerned to take care of the public credit might not rely on vain and deceitful projects for restoring and preserving the credit of the nation, but apply themselves seriously and diligently to bring about the only effectual means of doing it.

2ndly, Although so clear and evident a truth as is contained in the main question, cannot when proposed but obtain the consent of all, especially of such as are qualified to be in great stations, yet at this juncture, when the public is under such great necessities from the unexampled pressure of debts, and when all other remedies hitherto attempted have proved ineffectual, if not mischievous, we cannot but conceive it was extremely proper, and must have greatly conduced to the restoring and preserving the public credit, to have quickened the endeavours for that purpose of all in the public service, by so high an authority as a resolution of this House, not only pointing out to them the way they should take towards that good end, but intimating also, that as far as is possible to be attained, the doing so would be expected from them.

And therefore, we conceive, the main question should have been put and voted (as we think it must have been, had it been put) in the affirmative.

Sir William Dawes, Archbishop of York.  
William North, Lord North and Grey.  
Thomas Wentworth, Earl of Strafford.  
Francis North, Lord Guilford.  
Francis Gastrell, Bishop of Chester.  
John Hervey, Earl of Bristol.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Allen Bathurst, Lord Bathurst.  
James Compton, Lord Compton.  
George Henry Lee, Earl of Lichfield.  
William Gordon, Earl of Aberdeen.  
Thomas Foley, Lord Foley.  
William Cowper, Earl Cowper.  
Charles Butler, Lord Weston (Earl of Arran).  
John Ashburnham, Lord Ashburnham.  
Francis Atterbury, Bishop of Rochester.  
Henry Paget, Earl of Uxbridge.

## CCXX.

MARCH 2, 1722.

A Bill was brought up from the Commons entitled, ‘An Act to prevent the clandestine running of goods,’ and was read the third time on the 2nd of March, being passed on a division. It received the royal assent on the 7th of March and appears on the Statute Book (Statutes at Large) 8 George I, cap. 18. The Act was to continue in force for two years after the 25th of March.

The following protest is inserted.

1st, Because we are very sensible of the ill consequences that attend the pernicious practice of running goods; and therefore with some reasonable, proper, and effectual method (which we do not take this Bill to be) might have been set on foot to prevent it.

2ndly, Because the making the alteration, by a former Bill, from ships of fifteen ton to those of thirty, has not proved of any advantage, as we apprehend, since it has been admitted that the customs have fallen since; and we find no ground to hope, that the further raising the prohibition to ships of forty ton, as is done by this Bill, will be effectual; but, we think, there is reason to fear, that it may be a great prejudice to the coasting-trade in particular, since the owners of such vessels are thereby subjected to the heavy penalty of losing their ships, when possibly they may be entirely innocent themselves, and the fault may be committed only through the folly or knavery of the sailors, which will discourage the lending small vessels to those who trade in them, by which a great part of the coast-trade is at present carried on.

3rdly, Because the penalty of banishment in the Bill seems, in some cases, to be annexed to a very small offence: We do not think it too great for any one who shall be taken with goods of any considerable value, and with a manifest intent to defraud his Majesty of his customs; but as the Bill is worded, it will, as we conceive, extend to any gentleman, if armed, returning from his travels, who has about him knowingly the least trifle that has not been entered and paid duty, though he hath not the least design to defraud the King of his customs, or thinks he is transgressing any law whatsoever; and we do not think fit to depend, that so severe a law may not, in such hard cases, be sometimes executed with rigour.

4thly, Because it was endeavoured, but without success, at the Committee, to have excepted the barges of noblemen and of the

Lord Mayor and Companies of the City of London, which cannot be supported to be used (and the great barges of state belonging to the City cannot be used) in the running of goods; and therefore, we conceive, the making it necessary for the nobility, or the Lord Mayor and Companies to apply to the Admiralty for a license to use their own barges on the river Thames, or lay aside the use of them for want of such licenses, which cannot be obtained without giving such a security as will bind and encumber the real estates of the obligors, to be not only a great and unnecessary indignity, but also an invasion of property, especially in the case of the barges belonging to the City of London, which city has an ancient right to the conservation of the river of Thames, and as high an interest in it as possible to be had in any navigable river; and therefore we think it absurd, as well as injurious to property, to compel the great officers and Companies of that city, to ask and give security for a license to navigate or pass on that part of the Thames which may not improperly be called their own river.

5thly, It seems to us partial and unjust, that the prohibition of barges, and other vessels described in the Bill, should extend only to the counties for that purpose named in the Bill, and not to other maritime counties, especially such as are most infamous for running goods; where, though the vessels described may not as yet be so much in use as in the counties named, yet will undoubtedly be more used in other counties not named, when they can no longer be kept in the counties or places the Bill extends to; and, we conceive, laws should not make a distinction where there is no difference in reason, on a dependance that it may be supplied, by a new law another opportunity.

6thly, Because the time allowed by the Bill (viz. to the 25th of this instant March) either to dispose of the barges and other prohibited vessels, or obtain licenses for the keeping, is much too short, as we conceive, and will prove the occasion of more hardships being done than can possibly be foreseen.

Thomas Wentworth, Earl of Strafford.  
Nicholas Leke, Earl of Scarsdale.  
John Hervey, Earl of Bristol.  
Francis North, Lord Guilford.  
William North, Lord North and Grey.  
William Gordon, Earl of Aberdeen.  
Allen Bathurst, Lord Bathurst.

Francis Atterbury, Bishop of Rochester.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Charles Butler, Lord Weston (Earl of Arran).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 William Craven, Lord Craven.  
 Thomas Foley, Lord Foley.  
 Henry Paget, Earl of Uxbridge.  
 Samuel Masham, Lord Masham.  
 William Cowper, Earl Cowper.  
 James Compton, Lord Compton.  
 Rowland St. John, Lord St. John of Bletsoe.  
 George Henry Lee, Earl of Lichfield.

## CCXXI.

MARCH 3, 1722.

On the 27th of February, the Earl of Sunderland said that the privilege of entering protests had of late been so much abused that in his opinion some restraint ought to be put upon it, by limiting the time for entering the protestations upon asking leave of the House, which was never denied. He therefore moved, in order to explain and amend the Standing Order of the House of the 5th of March, 1642, in relation to protestations and dissents, 'That such Lords as shall make protestations or enter their dissents to any votes of this House, as they have a right to do, without asking leave of the House, either with or without their reasons, shall cause their protestations or dissents to be entered into the clerk's book the next sitting day of this House, before the hour of two o'clock, otherwise the same shall not be entered, and shall sign the same before the rising of the House the same day.' This motion was carried by 48 votes against 18, fourteen Peers protesting, but without reasons. The chief opposition came from Lords Cowper, Bathurst, North and Grey, Trevor, and Bishop Atterbury. It was then moved that on Saturday, the 3rd of March the House should determine whether the motion should become a Standing Order of the House, and that there should be a call of the Lords for that day. It appears that this motion was carried without a division.

The following protest was thereupon entered.

1st, For that the Standing Order in relation to the time of entering protestations was made above eighty years since, and was restrictive of an ancient right; and yet in all that time, till now, has never been thought not to have restrained that right enough; but on the contrary, whenever longer time than is allowed by that order has been asked, as it has been done in innumerable instances, it was never once denied (as we believe); which shews, that the constant opinion of this House has hitherto been, that the restraint brought

upon that ancient right of the Lords, by that old order, has been rather too much than too little.

2ndly, The abridging this right of protesting with reasons yet more, will necessarily cause the reasons to be penned with less accuracy, and probably longer than they would have been, had more time been allowed; which, though it may gratify those who differ in opinion from the protesters, yet will hurt the honour of the House, as we conceive, and the dignity of the records thereof; for we can by no means allow, that as much time should not be afforded to word the Lords reasons, which are to be entered on the Journals, as would be necessary to the wording of a pamphlet designed to be printed and published.

3rdly, Because, we conceive, that if this further restraint does not render the protesting quite impracticable, yet it must prove very incommodious and troublesome to the Lords who would make use of that their undoubted right; for if a debate should take up any long time, as most debates of consequence should do, the intermediate time allowed is, in our opinion, not sufficient for Lords who design to protest to meet and bring their several reasons together, and afterwards express them with that clearness, and so unexceptionably, as they ought to do; and besides, get them fairly and correctly entered on the Journal: So that, in our opinion, they must very often either be excluded from entering and signing their reasons, or endure a great deal of hardship and inconvenience, by denying themselves usual rest and refreshments (as is very obvious without further explanation) and be obliged to come long before their ordinary duty of attending the business of the House requires. So that, we conceive, this new restraint will either hinder protesting with reasons, or amount to a kind of punishment on those Lords who shall make use of their ancient and undoubted right of protesting.

4thly, There seems to us the less reason for this step, because if the liberty of entering protestations with reasons be in any degree abused, the House can, and does, order them, or such parts of them, as can be reasonably objected to, to be expunged; and this observation is yet stronger, for that of late, precedents have been made of expunging a great number of reasons, and of a various nature, by one general question; which is a very expeditious remedy for any abuse that can happen.

5thly, If ever there should be a time when the utmost candour and fairness is less in use than at present, this new restriction on the right of protesting with reasons may open a gap to many artifices and unfair practices in prejudice of that right; clerks may come later than usual, pretend other business, or write slower, or use other shifts to avoid perfecting the entry of the reasons till after the time allowed, especially if they shall think, though falsely, they gratify a majority of the House by so doing, which will make them at least hope for impunity; or if not so disposed, they may be, on the other hand, induced, and not unreasonably, to write faster and more loosely than will become the Journal of this House, that the entry may be finished within the time limited. We do not pretend to enumerate all the ways of making this alteration of the old Standing Order more inconvenient than appears at first sight, but only specify these few.

6thly, We do not think the right of entering protestations with reasons has been of late abused, so as to give occasion for this new restriction, though it may have been used of late more frequently than formerly; for which, according to our opinions, there hath been very proper occasions given; and since we cannot but think the right of protesting with reasons a valuable and useful privilege, we must confess our fears, lest these restrictions, though not now intended so, should end at length in a total extinction of that right.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William North, Lord North and Grey.  
Francis Gastrell, Bishop of Chester.  
John Hervey, Earl of Bristol.  
Francis Atterbury, Bishop of Rochester.  
Henry Paget, Earl of Uxbridge.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
William Gordon, Earl of Aberdeen.  
Charles Butler, Lord Weston (Earl of Arran).  
Allen Bathurst, Lord Bathurst.  
William Cowper, Earl Cowper.  
Thomas Foley, Lord Foley.  
Thomas Trevor, Lord Trevor.  
Rowland St. John, Lord St. John of Bletsoe.  
George Henry Lee, Earl of Lichfield.

## CCXXII.

MARCH 3, 1722.

Immediately after amending the Standing Order relative to protesting the Lords reviewed the reasons given in the protest of the 19th of February on the Navy Debt, and excised a portion by 45 votes to 18.

The following protest is inserted.

Because when we were giving reasons against putting off the further consideration of the causes of the Navy debt by long adjournments, probably for the whole Session, as we thought no reason could be more proper than that the subject-matter of that enquiry was not exhausted, but that very much material business remained to be considered on that head; so we did, and do yet conceive, that the following that general assertion, with an enumeration of the particular matters which yet did remain to be enquired into (as well such as arose from papers already before the House, as other, which we were well assured would arise in the further progress of that business from papers designed to be called for) did make the said general argument, which stands unexpunged, more strong, as well as more fair and candid, by shewing it was well founded upon particulars; and although the House has not thought fit to permit the said enumeration of particulars to stand on the Journal, yet, we conceive, we have attained this advantage, by having entered them, that it cannot be objected to us now, that we generally affirmed more business of consequence remained for that Committee to do, without being able to instance or specify what in particular.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 Francis Gastrell, Bishop of Chester.  
 William North, Lord North and Grey.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Francis Atterbury, Bishop of Rochester.  
 Henry Paget, Earl of Uxbridge.  
 William Gordon, Earl of Aberdeen.  
 William Cowper, Earl Cowper.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Foley, Lord Foley.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Thomas Trevor, Lord Trevor.  
 George Henry Lee, Earl of Lichfield.

## CCXXIII.

MARCH 3, 1722.

The Lords now proceeded to expunge the protest of the 20th of February, on the consideration of the state of the National Debt.

The following protest was inserted.

Because, we conceive, there is no instance of expunging the reasons of a protest, unless they were thought to contain something indecent to the House, or alleged matters of fact that were false. The first is not presumed in this present case; and as to the second, the matter depending upon figures, there can be no dispute, but upon the method of calculation; and if the Lords who signed the protest did choose to follow the method observed by the officers of the Exchequer, rather than any other, we do not conceive their reasons, founded on such authority, deserved to be expunged; neither do we think the said Lords were obliged to make deductions from the Exchequer account, which was laid before the House, without making the proper additions at the same time; for it must be agreed, that if the debt stated in 1717, was but forty-seven millions, eight hundred thousand pounds, and in the year 1720, above fifty millions, the bringing the annuities into the South Sea Company may occasion an increase of about two millions and a half; and the Army debentures, not yet brought to account, are estimated at about half a million more; and the debt of the Navy is near two millions; so the whole appears to be about fifty-five millions, and the increase of the National Debt (since it was stated in 1717) might therefore be reckoned about seven millions; and deducting the million of Exchequer bills, lent to the South Sea Company, the real increase of the National Debt, above what it was stated at in the year 1717, appears to us, at this time, about six millions. But as the reasons were founded on the account laid before the House, which kept in the million of Exchequer bills as a debt, and excluded all the other articles, we conceive they ought not to have been expunged, since the under-reckoning the debt was not the objection made against them.

Francis Gastrell, Bishop of Chester.

Thomas Wentworth, Earl of Strafford.

Francis North, Lord Guilford.

William North, Lord North and Grey.

upon that ancient right of the Lords, by that old order, has been rather too much than too little.

2ndly, The abridging this right of protesting with reasons yet more, will necessarily cause the reasons to be penned with less accuracy, and probably longer than they would have been, had more time been allowed; which, though it may gratify those who differ in opinion from the protesters, yet will hurt the honour of the House, as we conceive, and the dignity of the records thereof; for we can by no means allow, that as much time should not be afforded to word the Lords reasons, which are to be entered on the Journals, as would be necessary to the wording of a pamphlet designed to be printed and published.

3rdly, Because, we conceive, that if this further restraint does not render the protesting quite impracticable, yet it must prove very incommodious and troublesome to the Lords who would make use of that their undoubted right; for if a debate should take up any long time, as most debates of consequence should do, the intermediate time allowed is, in our opinion, not sufficient for Lords who design to protest to meet and bring their several reasons together, and afterwards express them with that clearness, and so unexceptionably, as they ought to do; and besides, get them fairly and correctly entered on the Journal: So that, in our opinion, they must very often either be excluded from entering and signing their reasons, or endure a great deal of hardship and inconvenience, by denying themselves usual rest and refreshments (as is very obvious without further explanation) and be obliged to come long before their ordinary duty of attending the business of the House requires. So that, we conceive, this new restraint will either hinder protesting with reasons, or amount to a kind of punishment on those Lords who shall make use of their ancient and undoubted right of protesting.

4thly, There seems to us the less reason for this step, because if the liberty of entering protestations with reasons be in any degree abused, the House can, and does, order them, or such parts of them, as can be reasonably objected to, to be expunged; and this observation is yet stronger, for that of late, precedents have been made of expunging a great number of reasons, and of a various nature, by one general question; which is a very expeditious remedy for any abuse that can happen.

5thly, If ever there should be a time when the utmost candour and fairness is less in use than at present, this new restriction on the right of protesting with reasons may open a gap to many artifices and unfair practices in prejudice of that right; clerks may come later than usual, pretend other business, or write slower, or use other shifts to avoid perfecting the entry of the reasons till after the time allowed, especially if they shall think, though falsely, they gratify a majority of the House by so doing, which will make them at least hope for impunity; or if not so disposed, they may be, on the other hand, induced, and not unreasonably, to write faster and more loosely than will become the Journal of this House, that the entry may be finished within the time limited. We do not pretend to enumerate all the ways of making this alteration of the old Standing Order more inconvenient than appears at first sight, but only specify these few.

6thly, We do not think the right of entering protestations with reasons has been of late abused, so as to give occasion for this new restriction, though it may have been used of late more frequently than formerly; for which, according to our opinions, there hath been very proper occasions given; and since we cannot but think the right of protesting with reasons a valuable and useful privilege, we must confess our fears, lest these restrictions, though not now intended so, should end at length in a total extinction of that right.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William North, Lord North and Grey.  
Francis Gastrell, Bishop of Chester.  
John Hervey, Earl of Bristol.  
Francis Atterbury, Bishop of Rochester.  
Henry Paget, Earl of Uxbridge.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
William Gordon, Earl of Aberdeen.  
Charles Butler, Lord Weston (Earl of Arran).  
Allen Bathurst, Lord Bathurst.  
William Cowper, Earl Cowper.  
Thomas Foley, Lord Foley.  
Thomas Trevor, Lord Trevor.  
Rowland St. John, Lord St. John of Bletsoe.  
George Henry Lee, Earl of Lichfield.

upon that ancient right of the Lords, by that old order, has been rather too much than too little.

2ndly, The abridging this right of protesting with reasons yet more, will necessarily cause the reasons to be penned with less accuracy, and probably longer than they would have been, had more time been allowed; which, though it may gratify those who differ in opinion from the protesters, yet will hurt the honour of the House, as we conceive, and the dignity of the records thereof; for we can by no means allow, that as much time should not be afforded to word the Lords reasons, which are to be entered on the Journals, as would be necessary to the wording of a pamphlet designed to be printed and published.

3rdly, Because, we conceive, that if this further restraint does not render the protesting quite impracticable, yet it must prove very incommodious and troublesome to the Lords who would make use of that their undoubted right; for if a debate should take up any long time, as most debates of consequence should do, the intermediate time allowed is, in our opinion, not sufficient for Lords who design to protest to meet and bring their several reasons together, and afterwards express them with that clearness, and so unexceptionably, as they ought to do; and besides, get them fairly and correctly entered on the Journal: So that, in our opinion, they must very often either be excluded from entering and signing their reasons, or endure a great deal of hardship and inconvenience, by denying themselves usual rest and refreshments (as is very obvious without further explanation) and be obliged to come long before their ordinary duty of attending the business of the House requires. So that, we conceive, this new restraint will either hinder protesting with reasons, or amount to a kind of punishment on those Lords who shall make use of their ancient and undoubted right of protesting.

4thly, There seems to us the less reason for this step, because if the liberty of entering protestations with reasons be in any degree abused, the House can, and does, order them, or such parts of them, as can be reasonably objected to, to be expunged; and this observation is yet stronger, for that of late, precedents have been made of expunging a great number of reasons, and of a various nature, by one general question; which is a very expeditious remedy for any abuse that can happen.

5thly, If ever there should be a time when the utmost candour and fairness is less in use than at present, this new restriction on the right of protesting with reasons may open a gap to many artifices and unfair practices in prejudice of that right; clerks may come later than usual, pretend other business, or write slower, or use other shifts to avoid perfecting the entry of the reasons till after the time allowed, especially if they shall think, though falsely, they gratify a majority of the House by so doing, which will make them at least hope for impunity; or if not so disposed, they may be, on the other hand, induced, and not unreasonably, to write faster and more loosely than will become the Journal of this House, that the entry may be finished within the time limited. We do not pretend to enumerate all the ways of making this alteration of the old Standing Order more inconvenient than appears at first sight, but only specify these few.

6thly, We do not think the right of entering protestations with reasons has been of late abused, so as to give occasion for this new restriction, though it may have been used of late more frequently than formerly; for which, according to our opinions, there hath been very proper occasions given; and since we cannot but think the right of protesting with reasons a valuable and useful privilege, we must confess our fears, lest these restrictions, though not now intended so, should end at length in a total extinction of that right.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
William North, Lord North and Grey.  
Francis Gastrell, Bishop of Chester.  
John Hervey, Earl of Bristol.  
Francis Atterbury, Bishop of Rochester.  
Henry Paget, Earl of Uxbridge.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
William Gordon, Earl of Aberdeen.  
Charles Butler, Lord Weston (Earl of Arran).  
Allen Bathurst, Lord Bathurst.  
William Cowper, Earl Cowper.  
Thomas Foley, Lord Foley.  
Thomas Trevor, Lord Trevor.  
Rowland St. John, Lord St. John of Bletsoe.  
George Henry Lee, Earl of Lichfield.

## CCXXII.

MARCH 3, 1722.

Immediately after amending the Standing Order relative to protesting the Lords reviewed the reasons given in the protest of the 19th of February on the Navy Debt, and excised a portion by 45 votes to 18.

The following protest is inserted.

Because when we were giving reasons against putting off the further consideration of the causes of the Navy debt by long adjournments, probably for the whole Session, as we thought no reason could be more proper than that the subject-matter of that enquiry was not exhausted, but that very much material business remained to be considered on that head; so we did, and do yet conceive, that the following that general assertion, with an enumeration of the particular matters which yet did remain to be enquired into (as well such as arose from papers already before the House, as other, which we were well assured would arise in the further progress of that business from papers designed to be called for) did make the said general argument, which stands unexpunged, more strong, as well as more fair and candid, by shewing it was well founded upon particulars; and although the House has not thought fit to permit the said enumeration of particulars to stand on the Journal, yet, we conceive, we have attained this advantage, by having entered them, that it cannot be objected to us now, that we generally affirmed more business of consequence remained for that Committee to do, without being able to instance or specify what in particular.

Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 Francis Gastrell, Bishop of Chester.  
 William North, Lord North and Grey.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Francis Atterbury, Bishop of Rochester.  
 Henry Paget, Earl of Uxbridge.  
 William Gordon, Earl of Aberdeen.  
 William Cowper, Earl Cowper.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Foley, Lord Foley.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Thomas Trevor, Lord Trevor.  
 George Henry Lee, Earl of Lichfield.

## CCXXIII.

MARCH 3, 1722.

The Lords now proceeded to expunge the protest of the 20th of February, on the consideration of the state of the National Debt.

The following protest was inserted.

Because, we conceive, there is no instance of expunging the reasons of a protest, unless they were thought to contain something indecent to the House, or alleged matters of fact that were false. The first is not presumed in this present case; and as to the second, the matter depending upon figures, there can be no dispute, but upon the method of calculation; and if the Lords who signed the protest did choose to follow the method observed by the officers of the Exchequer, rather than any other, we do not conceive their reasons, founded on such authority, deserved to be expunged; neither do we think the said Lords were obliged to make deductions from the Exchequer account, which was laid before the House, without making the proper additions at the same time; for it must be agreed, that if the debt stated in 1717, was but forty-seven millions, eight hundred thousand pounds, and in the year 1720, above fifty millions, the bringing the annuities into the South Sea Company may occasion an increase of about two millions and a half; and the Army debentures, not yet brought to account, are estimated at about half a million more; and the debt of the Navy is near two millions; so the whole appears to be about fifty-five millions, and the increase of the National Debt (since it was stated in 1717) might therefore be reckoned about seven millions; and deducting the million of Exchequer bills, lent to the South Sea Company, the real increase of the National Debt, above what it was stated at in the year 1717, appears to us, at this time, about six millions. But as the reasons were founded on the account laid before the House, which kept in the million of Exchequer bills as a debt, and excluded all the other articles, we conceive they ought not to have been expunged, since the under-reckoning the debt was not the objection made against them.

Francis Gastrell, Bishop of Chester.

Thomas Wentworth, Earl of Strafford.

Francis North, Lord Guilford.

William North, Lord North and Grey.

## CCXXII.

MARCH 3, 1722.

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The following protest is inserted.

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Sir William Dawes, Archbishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 Francis Gastrell, Bishop of Chester.  
 William North, Lord North and Grey.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Francis Atterbury, Bishop of Rochester.  
 Henry Paget, Earl of Uxbridge.  
 William Gordon, Earl of Aberdeen.  
 William Cowper, Earl Cowper.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Foley, Lord Foley.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Thomas Trevor, Lord Trevor.  
 George Henry Lee, Earl of Lichfield.

## CCXXIII.

MARCH 3, 1722.

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The following protest was inserted.

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Francis Gastrell, Bishop of Chester.

Thomas Wentworth, Earl of Strafford.

Francis North, Lord Guilford.

William North, Lord North and Grey.

Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Hervey, Earl of Bristol.  
 Henry Paget, Earl of Uxbridge.  
 William Gordon, Earl of Aberdeen.  
 Allen Bathurst, Lord Bathurst.  
 William Cowper, Earl Cowper.  
 Thomas Foley, Lord Foley.  
 Francis Atterbury, Bishop of Rochester.  
 Thomas Trevor, Lord Trevor.  
 George Henry Lee, Earl of Lichfield.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Charles Butler, Lord Weston (Earl of Arran).

## CCXXIV.

MARCH 5, 1722.

On this day, notice having been given on the 3rd of March (Saturday) that the protest of the 17th of January would be taken into consideration, that namely on the rejection of the petition from the London clergy against the Quakers' Affirmation Bill, the reasons for this protest were expunged by 54 votes to 18. The following protest was inserted.

Because former reasons entered against some late resolutions for expunging do, as we conceive, equally extend to justify our dissent to this resolution; and therefore, to avoid repetition, we refer to those reasons, with this further, that we do not find, and believe there is not any precedent, wherein reasons for a protestation have been taken into consideration by the House so long after they were entered, as in the present case; and the inconveniences of doing so are, in our opinion, very manifest.

Francis North, Lord Guilford.  
 Rowland St. John, Lord St. John of Bletsoe.  
 Thomas Wentworth, Earl of Strafford.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Allen Bathurst, Lord Bathurst.  
 Francis Gastrell, Bishop of Chester.  
 William Craven, Lord Craven.  
 Thomas Foley, Lord Foley.  
 William Cowper, Earl Cowper.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 William North, Lord North and Grey.  
 Henry Paget, Earl of Uxbridge.  
 William Gordon, Earl of Aberdeen.  
 Francis Atterbury, Bishop of Rochester.  
 George Henry Lee, Earl of Lichfield.

## CCXXV.

OCTOBER 11, 1722.

The King's Speech read by the Chancellor (Macclesfield) informed the two Houses of Parliament that 'a dangerous conspiracy was formed and was still being carried on against the King's person and Government, in favour of a Popish pretender,' and that several persons had been apprehended for complicity in this plot. Among these was Atterbury, Bishop of Rochester, who was arrested on the 24th of August, 1722. For the facts, the reader is referred to the Stuart Papers, vol i, in which is contained Atterbury's correspondence.

The first step taken by the Government was to move for a suspension of the Habeas Corpus Act. A Bill was brought in, read twice, put into Committee, passed on the same day, and sent to the House of Commons for the purpose of suspending the Act till the 24th of October, 1723. It was passed in the House of Commons on the 16th of October by 246 to 193.

The following protest was entered on the second reading.

1st, Because the Act, commonly called the Habeas Corpus Act, is admitted on all hands to be the great bulwark of the liberty of the subject; and therefore, although in cases of actual rebellion and intended invasion, that Act has been at times before suspended, yet it was done sparingly and by degrees; and the utmost term for which it has hitherto been suspended, at any one time, has been the term of six months; which consideration puts us under a very melancholy apprehension, for the very being or effect of that excellent law, since the present suspension of it, for the term of a year or more, will be full as good an authority, in point of precedent, for suspending it on another occasion for the term of two years, as any former precedent is now for the present suspension during one year and more.

2ndly, The detestable conspiracy which occasions the present suspension having been discovered and signified to the City of London about five months since, and divers imprisoned for it a considerable time past, we cannot but conceive it to be highly unreasonable to suppose, that the danger of this plot, in the hands of a faithful and diligent Ministry, will continue for a year and more yet to come, and that in so high a degree as to require a suspension of the liberty of the subject, for so we take it to be, during all that time.

3rdly, His Majesty, having not visited his dominions abroad these two last years, will, very probably, leave the Kingdom the

next spring, to that end ; in which case, this great power of suspecting and imprisoning the subjects at will, and detaining them in prison till the 24th of October, 1723, and for as much longer time as till they can, after that, take the benefit of the Habeas Corpus Act (if they can then do it at all), will be lodged in the hands of some of our fellow-subjects, who, we are not so sure, will be above all prejudices and partialities, as we are, that his Majesty will.

4thly, This weakens the provision made in the Bill for the Lords, and Members of the other House of Parliament, that they shall not be committed or detained, sitting the Parliament, without the consent of the Houses respectively ; since it is very probable the Parliament will not be sitting the greatest part of the time for which this Bill, if enacted, will continue a law : and such is the weakness of human nature, that we cannot be assured, but that the apprehension of what may befall any Member of Parliament, while the Parliament is not sitting, may have some influence on the freedom of acting and debating in Parliament.

5thly, The dictatorial power was always ended or laid down immediately when the urgent occasion for it was over, and was never continued much longer, till a little before that great state (from which all others draw so many maxims of government) lost its liberties.

Sir William Dawes, Archbishop of York.  
Nicholas Leke, Earl of Scarsdale.  
George Henry Hay, Lord Hay (Earl of Kinnoull).  
William Craven, Lord Craven.  
Arthur Annesley, Earl of Anglesey.  
George Henry Lee, Earl of Lichfield.  
Heneage Finch, Earl of Aylesford.  
Allen Bathurst, Lord Bathurst.  
Peregrine Hyde Osborne, Lord Osborne.  
John Ashburnham, Lord Ashburnham.  
Thomas Trevor, Lord Trevor.  
Francis Gastrell, Bishop of Chester.  
Samuel Masham, Lord Masham.  
John Leveson Gower, Lord Gower.  
William Cowper, Earl Cowper.  
Francis North, Earl of Guilford.  
Robert Benson, Lord Bingley.  
Henry Paget, Earl of Uxbridge.  
Thomas Wentworth, Earl of Strafford.

## CCXXVI.

OCTOBER 26, 1722.

On this day, Lord Townshend, one of the Secretaries of State, informed the House by the King's command, that there was just reason to suspect that the Duke of Norfolk was engaged in the conspiracy which had lately been detected, and that he had thereupon been apprehended under the Act which had just been passed. The King thereupon desired the consent of the House for this detention. After reading the proceedings of the House in the case of Lord Griffin (November 1689), and then in the case of the Earls of Huntingdon and Marlborough (November 1692), the House consented. On the 17th the House had agreed to the detention of the Bishop of Rochester, Lord Boyle, and Lord North and Grey, on a similar message through Lord Carteret, the other Secretary of State. The motion in the case of the Duke was opposed, but was carried by 60 to 28. The Duke appears to have been speedily released.

1st, Because we apprehend it to be one of the ancient undoubted rights and privileges of this House, that no Member of the House be imprisoned or detained, during the sitting of Parliament, upon suspicion of high treason, until the cause and grounds of such suspicion be communicated to the House, and the consent of the House thereupon had to such imprisonment or detainer; which ancient right and privilege is recognized and declared in plain, express and full terms, in the Act passed this Session of Parliament, to which the message from his Majesty refers.

2ndly, Because it appears clear to us, not only from former precedents, even when no such law was in being as that above-mentioned, but also from the necessary instruction of the proviso therein concerning the privileges of Parliament, that the House is entitled to have the matter of the suspicion communicated to them in such manner as is consistent with the dignity of the House, and will enable them to deliberate and found a right judgment thereupon for or against the imprisonment or detainer of the person concerned. But to maintain, 'that whilst that law shall be in force, it shall be sufficient, in order to obtain the consent of the House, to communicate a general suspicion, that a member of the House is concerned in a traitorous conspiracy, without disclosing any matter or circumstance to warrant such suspicion,' is, in our opinions, an unjustifiable construction of the said proviso, and such as wholly deprives the House of the liberty of giving their free and impartial advice to the throne on this occasion; and such a construction

being made upon a law, so plainly intended by the wisdom of this Parliament to assert the privileges of both Houses, appear to us, to pervert the plain words and meaning of it, in such a manner, as renders it wholly destructive of those very privileges intended to be preserved.

3rdly, Because his Majesty having, in effect, required the judgment and advice of the House touching the imprisonment and detainer of the Duke of Norfolk, we ought not, as we conceive, either in duty to his Majesty, or in justice to the Peer concerned, to found our opinions concerning the same on any grounds, other than such only as his Majesty hath been pleased to communicate in his message ; and his Majesty, by his message, having communicated only a general suspicion, we think we cannot, without the highest injustice to the Duke, and the most palpable violation of one of the most valuable privileges belonging to every member of this House, give our consent to his imprisonment or detainer, and thereby make ourselves parties to, and, in some degree, the authors of such his imprisonment, until we have a more particular satisfaction touching the matters of which he stands suspected ; more especially considering the long and unprecedented duration of the Act above mentioned, whereby the benefit not only of the Act, commonly called the Habeas Corpus Act, but of Magna Charta itself, and other valuable laws of liberty, are taken from the subjects of this realm, and extraordinary powers are given to the persons therein mentioned, over the liberties of the people for a twelvemonth and upwards.

4thly, Because, we think, it is inconsistent, as well with the honour and dignity, as with the justice of this House, in the case of the meanest subjects, to come to resolutions for depriving them of their liberty, upon other than clear and satisfactory grounds : but as the members of both Houses of Parliament are, by the laws and constitution of this Kingdom, invested with peculiar rights and privileges, of which the privilege before-mentioned is a most essential one, as well for the support of the Crown itself, as for the good and safety of the whole Kingdom ; we cannot, as we conceive, without betraying those great trusts which are reposed in us, as Peers of this realm, agree to a resolution which tends, in our opinion, to subject every member of this House, even the sitting Parliament, to unwarrantable and arbitrary imprisonments ; and we have the greater reason to be jealous of the infringement

of this privilege on this occasion, because it had been easy, as we think, for those who had the honour to advise the framing the said message, to have communicated to this House the matter of which the Duke of Norfolk stands suspected, in such a manner as might be consistent with the privileges of this House; and at the same time avoided any danger or inconvenience to the Crown, with regard to the future prosecution of the said Duke, if any such shall be.

5thly, It is the known usage and law of Parliament, that this House will not permit any Peer to be sequestered from Parliament, on a general impeachment of the Commons, even for high treason, till the matter of the charge be specified in articles exhibited to this House; which explains to us the nature of the privilege intended to be secured by the proviso, and is the highest instance of the care of this House to preserve it from being violated on any pretence whatsoever: but, in our opinions, it must create the greatest inconvenience and repugnancy in the proceedings of the House, to consent that a Peer of the realm should be imprisoned or detained (sitting the Parliament) on a suspicion of high treason only, not warranted, for aught appears to us, by any information given against him upon oath, or otherwise, and no particular circumstance of such suspicion being communicated to the House.

6thly, Because a resolution so ill grounded as this appears to us may produce very ill effects, in the present unhappy conjuncture of affairs, by creating fresh jealousies in the minds of his Majesty's subjects, who cannot fail of entertaining certain hopes of the safety of his Majesty's person and Government against all his enemies, from the advice and assistance of both Houses of Parliament, whilst they continue in the full enjoyment and free exercise of their ancient and legal rights and privileges; but on the other hand, may be alarmed with new fears for the honour and safety of his Majesty and his Government, by a resolution taken by this House for the imprisonment of a Peer of the realm, in such a manner as, in our opinions, is highly injurious to his person, and also to the privilege of every other Peer of this realm, and which may prove of fatal consequence to the constitution of both Houses of Parliament.

Sir William Dawes, Archbishop of York.  
Nicholas Leke, Earl of Scarsdale.  
Thomas Wentworth, Earl of Strafford.

Allen Bathurst, Lord Bathurst.  
 Francis Gastrell, Bishop of Chester.  
 Thomas Foley, Lord Foley.  
 Thomas Trevor, Lord Trevor.  
 James Compton, Lord Compton.  
 John Hervey, Earl of Bristol.  
 Henry Paget, Earl of Uxbridge.  
 Nicholas Lechmere, Lord Lechmere.  
 Peregrine Hyde Osborne, Lord Osborne.  
 John Ashburnham, Lord Ashburnham.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 William Cowper, Earl Cowper.  
 Robert Benson, Lord Bingley.  
 Robert Harley, Earl of Oxford.  
 Francis North, Lord Guilford.  
 Price Devereux, Viscount Hereford.

## CCXXVII.

JANUARY 21, 1723.

Christopher Layer, one of the persons implicated in the plot of 1722, was brought to trial at the King's Bench on the 21st of November, 1722, and convicted. After many respitea, he was executed on the 17th of May, 1723. His head was set on Temple Bar, and when it fell down was picked up by one Pearce, who sold it for a large sum to Rawlinson, the Jacobite antiquary and Nonjuror. Rawlinson considered it a precious relic, and ordered that it should be buried with him.—See Nichols' Literary Anecdotes, vol. v. Layer's trial is to be found in volume xvi. of Howell's State Trials. The delay in Layer's execution was due to the hope that he would make some disclosures, for on the 15th of January, 1723, a motion was made in the House of Commons that a Committee of the House composed of certain Privy Councillors should proceed to the Tower to examine Layer on the subject. Some of the Lords complained that an unnecessary delay had occurred in the printing and publishing of Layer's trial, and a motion was made that 'the Judges of the King's Bench be ordered to cause the trial of Christopher Layer, Esq. to be forthwith printed and published, the same being first penned by the King's counsel.' This motion was opposed by Lord Carteret, and negatived by 53 to 32. The following protest was thereupon inserted.

1st, Because it appeared to us, on the debate of the main question, that there has been an unnecessary and affected delay in the printing and publishing the said trial, it being full two months since Christopher Layer was tried; and direction having been given for the speedy publishing thereof, so long since as the 27th of November last, as appears by an advertisement, printed by authority, in the Gazette; and it having been allowed in the debate, that the

delay was extraordinary, and no fact having been laid before the House sufficient, as we apprehend, to excuse such delay, we think, that the main question ought to have been put, as the only security, in our opinion, against any further neglect, and to prevent any imputation on the honour of the House for countenancing or conniving at such delay.

2ndly, This House having received no manner of satisfaction, since his Majesty's most gracious Speech from the throne, touching the horrid conspiracy therein communicated, and no step having been taken, for aught appears to us, either in Parliament or elsewhere, for obtaining the justice due by the laws of the land to any of the conspirators (except the said Layer) though his Majesty was pleased to assure this House, in his Speech from the throne, 'that some of the conspirators were then taken up and secured;' we think that the main question ought to have been put, whereby the publication of the said trial might have been quickened, and thereby the nation have received such satisfaction concerning the said execrable conspiracy, as could be collected from the said proceeding, and this House have been enabled to make such use thereof as should appear necessary in their wisdom for the honour, interest, and safety of his Majesty and his Kingdoms.

3rdly, Because we are apprehensive, that the delay in publishing the said trial may have contributed to create jealousies concerning the said conspiracy, and may have encouraged ill-affected persons to foment the same, to the great prejudice of his Majesty's Government; and as, in our opinion, the speedy publishing the said trial, if the same had been done, might have conduced to the prevention of those mischiefs, we also conceive, that the further growth of them might have been checked, if the main question had been put, and carried in the affirmative.

4thly, Because we think it of great consequence to his Majesty's service, that the publication of the said trial should have been made under the strictest security against any partiality or other abuse relating thereto; and therefore, we think, the main question ought to have been put, whereby the care and inspection thereof would have been lodged, by the authority of this House, in the hands of the judges, to whom it properly belongs; and its falling into any other hands not so proper, or not so immediately responsible to this House, would have been prevented.

tradicts the opinion of the House, if, as we conceive, so much of the essence of a protestation with reasons, that of the great number of instances of such protestations standing on the Journals of this House, not one would be found regular among them, if that due caution and respect to the opinion of the majority was omitted ; and therefore it seems clear to us, that the like censure might be as justly passed on all the protestations with reasons, that were ever entered if they were recited and represented in the same manner as we conceive this to be.

George Henry Lee, Earl of Lichfield.  
 William Greville, Lord Brooke.  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 William Cowper, Earl Cowper.  
 William Gordon, Earl of Aberdeen.  
 Francis Gastrell, Bishop of Chester.  
 Nicholas Lechmere, Lord Lechmere.  
 Allen Bathurst, Lord Bathurst.  
 Peregrine Hyde Osborne, Lord Osborne.  
 Thomas Wentworth, Earl of Strafford.  
 Thomas Trevor, Lord Trevor.  
 John Ashburnham, Lord Ashburnham.  
 Nicholas Leke, Earl of Scarsdale.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Brownlow Cecil, Earl of Exeter.  
 John Leveson Gower, Lord Gower.  
 Arthur Annesley, Earl of Anglesey.  
 Francis North, Lord Guilford.  
 William Craven, Lord Craven.  
 James Compton, Lord Compton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Robert Benson, Lord Bingley.  
 Price Devereux, Viscount Hereford.

## CCXXX.

JANUARY 29, 1723.

A motion was made by the Government, ‘That the said trial has been printed and published with as much expedition as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally accustomed in the like cases ; and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same

had been under the direction of any others whatsoever besides the judges,' to which an amendment was proposed to leave out the words 'It is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been under the direction of any others whatsoever besides the judges.' The amendment was rejected by 62 to 35, and the following protest was inserted.

Because we conceive it to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration should be put, especially if objected to, that Lords may not be deprived of the liberty of giving their judgments on the said different matters, if they think fit.

George Henry Lee, Earl of Lichfield.  
 Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 Henry Paget, Earl of Uxbridge.  
 William Cowper, Earl Cowper.  
 William Greville, Lord Brooke.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Trevor, Lord Trevor.  
 Thomas Foley, Lord Foley.  
 William Gordon, Earl of Aberdeen.  
 Nicholas Lechmere, Lord Lechmere.  
 John Leveson Gower, Lord Gower.  
 Peregrine Hyde Osborne, Lord Osborne.  
 Francis Gastrell, Bishop of Chester.  
 James Compton, Lord Compton.  
 John Ashburnham, Lord Ashburnham.  
 Francis North, Lord Guilford.  
 Arthur Annesley, Earl of Anglesey.  
 Brownlow Cecil, Earl of Exeter.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Robert Benson, Lord Bingley.  
 William Craven, Lord Craven.  
 Price Devereux, Viscount Hereford.

## CCXXXI.

JANUARY 29, 1723.

Then the main question was put 'that the said trial has been printed and published with as much expedition, as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally

tradicts the opinion of the House, if, as we conceive, so much of the essence of a protestation with reasons, that of the great number of instances of such protestations standing on the Journals of this House, not one would be found regular among them, if that due caution and respect to the opinion of the majority was omitted ; and therefore it seems clear to us, that the like censure might be as justly passed on all the protestations with reasons, that were ever entered if they were recited and represented in the same manner as we conceive this to be.

George Henry Lee, Earl of Lichfield.  
 William Greville, Lord Brooke.  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 William Cowper, Earl Cowper.  
 William Gordon, Earl of Aberdeen.  
 Francis Gastrell, Bishop of Chester.  
 Nicholas Lechmere, Lord Lechmere.  
 Allen Bathurst, Lord Bathurst.  
 Peregrine Hyde Osborne, Lord Osborne.  
 Thomas Wentworth, Earl of Strafford.  
 Thomas Trevor, Lord Trevor.  
 John Ashburnham, Lord Ashburnham.  
 Nicholas Leke, Earl of Scarsdale.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Brownlow Cecil, Earl of Exeter.  
 John Leveson Gower, Lord Gower.  
 Arthur Annesley, Earl of Anglesey.  
 Francis North, Lord Guilford.  
 William Craven, Lord Craven.  
 James Compton, Lord Compton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Robert Benson, Lord Bingley.  
 Price Devereux, Viscount Hereford.

## CCXXX.

JANUARY 29, 1723.

A motion was made by the Government, ‘That the said trial has been printed and published with as much expedition as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally accustomed in the like cases ; and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same

had been under the direction of any others whatsoever besides the judges,' to which an amendment was proposed to leave out the words 'It is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been under the direction of any others whatsoever besides the judges.' The amendment was rejected by 62 to 35, and the following protest was inserted.

Because we conceive it to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration should be put, especially if objected to, that Lords may not be deprived of the liberty of giving their judgments on the said different matters, if they think fit.

George Henry Lee, Earl of Lichfield.  
 Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 Henry Paget, Earl of Uxbridge.  
 William Cowper, Earl Cowper.  
 William Greville, Lord Brooke.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Trevor, Lord Trevor.  
 Thomas Foley, Lord Foley.  
 William Gordon, Earl of Aberdeen.  
 Nicholas Lechmere, Lord Lechmere.  
 John Leveson Gower, Lord Gower.  
 Peregrine Hyde Osborne, Lord Osborne.  
 Francis Gastrell, Bishop of Chester.  
 James Compton, Lord Compton.  
 John Ashburnham, Lord Ashburnham.  
 Francis North, Lord Guilford.  
 Arthur Annesley, Earl of Anglesey.  
 Brownlow Cecil, Earl of Exeter.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Robert Benson, Lord Bingley.  
 William Craven, Lord Craven.  
 Price Devereux, Viscount Hereford.

## CCXXXI.

JANUARY 29, 1723.

Then the main question was put 'that the said trial has been printed and published with as much expedition, as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally

accustomed in the like cases; and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been under the direction of any others whatsoever besides the judges,' and was carried by 58 to 32. It was followed by the protest.

1st, Because when a question was moved, on the twenty-first of this instant, in order to appoint a day for this House to enquire, if the printing Layer's trial was dispatched with all proper expedition, or if not, where the fault lay; which would naturally have led us to have seen, if it had fallen into any other hands than it should have done; though we thought it highly reasonable, the majority of the House then did not, and we were yet willing to have gone into the same examination; but we cannot conceive it to be fit or agreeable to the dignity or regular course of proceedings in this House to vote or resolve so many matters of fact, as are contained in this resolution, without any examination at all, or any evidence given to support them, and which in their nature, we think, cannot be without the knowledge of any one Lord present in the debate.

2ndly, As for the insinuation with which the protestation is charged by this resolution, we do not apprehend the protestation to be justly liable to that charge; but supposing it to be so, we cannot yet but be of opinion, that the permitting that matter to have been fully inquired into, would have been the properest and best method of preventing or answering that insinuation.

George Henry Lee, Earl of Lichfield.  
 Nicholas Leke, Earl of Scarsdale.  
 William Greville, Lord Brooke.  
 William Cowper, Earl Cowper.  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 Thomas Wentworth, Earl of Strafford.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Trevor, Lord Trevor.  
 Peregrine Hyde Osborne, Lord Osborne.  
 John Leveson Gower, Lord Gower.  
 William Gordon, Earl of Aberdeen.  
 Price Devereux, Viscount Hereford.  
 Francis Gastrell, Bishop of Chester.  
 James Compton, Lord Compton.  
 Arthur Annesley, Earl of Anglesey.  
 Francis North, Lord Guilford.

Robert Benson, Lord **Bingley**.  
Nicholas Lechmere, Lord **Lechmere**.  
William Craven, Lord **Craven**.  
Brownlow Cecil, Earl of **Exeter**.  
Thomas Windsor, Lord **Montjoy** (Viscount Windsor).  
George Henry Hay, Lord **Hay** (Earl of Kinnoull).

## CCXXXII.

JANUARY 29, 1723.

A motion was made ‘that this House, not capable of doubting of the truth of the traitorous conspiracy communicated to them by his Majesty in his most gracious Speech from the throne, has ever since that time received very great satisfaction from some convincing proofs touching the same, and is firmly persuaded, that such further satisfaction will be yet in due time given, as must render it impossible for any one to doubt thereof.’ This was carried without a division. The protest follows.

1st, Because, to the best of our apprehensions, no part of the protestation gave occasion for the putting of such a question; for it was, as we conceive, clearly admitted in the protestation, that his Majesty’s most gracious Speech from the throne had given satisfaction as to the truth of the conspiracy in general; and the excepting Layer’s trial therein did plainly allow, that the said trial had, as far as that went, opened the particulars; and yet the resolution, as we take it, carries with it an insinuation, that the protestation had raised a doubt concerning the truth of the said traitorous conspiracy; which insinuation is, in our opinion, entirely groundless.

2ndly, The said several resolutions importing censures, as we conceive, on the said protestation, and being not warranted by more than one precedent, that we can find on the Journals of this House; and the liberty of protesting with reasons being an unquestionable right and essential privilege of the whole Peerage, we are of opinion, that the said resolutions tend to discountenance and discourage the due liberty of protesting, and in that respect may be, as we apprehend, of dangerous consequence.

George Henry Lee, Earl of **Lichfield**.  
William Cowper, Earl **Cowper**.  
William Greville, Lord **Brooke**.  
Nicholas Leke, Earl of **Scarsdale**.

Allen Bathurst, Lord Bathurst.  
 William Gordon, Earl of Aberdeen.  
 Thomas Foley, Lord Foley.  
 Henry Paget, Earl of Uxbridge.  
 Peregrine Hyde Osborne, Lord Osborne.  
 John Leveson Gower, Lord Gower.  
 Francis Gastrell, Bishop of Chester.  
 Robert Benson, Lord Bingley.  
 James Compton, Lord Compton.  
 Nicholas Lechmere, Lord Lechmere.  
 Thomas Wentworth, Earl of Strafford.  
 Brownlow Cecil, Earl of Exeter.  
 Francis North, Lord Guilford.  
 Arthur Annesley, Earl of Anglesey.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 William Craven, Lord Craven.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Price Devereux, Viscount Hereford.

## CCXXXIII.

FEBRUARY 16, 1723.

The annual Mutiny Bill provided for the pay and maintenance of 16,449 effectives, 18½ 'invalids,' being an increase of more than 4000 men on the estimates of the previous year. The question had been debated in the House of Commons on the 26th of October on the motion of Mr. Treby, and the augmentation was carried by 236 to 164. The charge was met by a land tax of 2s. in the pound, and by the malt duty. Walpole at that time hinted that it would be expedient to levy an exceptional tax of 5s. in the pound on the estates of Papists and Nonjurors, on the plea that the extraordinary expenses were incurred by reason of their conspiracies. Such an Act, 9 George I, cap. 18, received the royal assent on the 27th of May.

The following protest was inserted against the augmentation of the forces, after a division, in which the proposal was carried by 70 to 25.

1st, Because, as we conceive, the keeping an army of regular troops in this Kingdom, under martial law, consisting of a greater number than what we take to be necessary for the guard of the King's person and defence of the Government, is of the most dangerous consequence to the constitution of this Kingdom, and, in our opinion, may bring on a total alteration of the frame of our Government from a legal and limited monarchy to a despotic; and we are induced to be of this judgment, as well from the nature of armies, and the inconsistency of so great a military power and martial law with the civil authority, as from the known and universal experi-

ence of other countries in Europe, which by the influence and power of standing armies, in time of peace, have from limited monarchies, like ours, being changed into absolute. For which reason we cannot give our consent to this amendment, whereby the present number of troops amounting in the whole (invalids included) to fourteen thousand odd hundred men (which we think abundantly sufficient for all good purposes) will be increased to near four thousand more, although there be at this time no ground to apprehend an invasion from a foreign enemy, or, as we believe, any insurrection or rebellion at home.

2ndly, Because that which seems to have given rise to this augmentation of the army, is the late treasonable conspiracy, which his Majesty at the opening of this Session acquainted his Parliament with ; and that conspiracy having been discovered above eight months since, and the further detecting and punishing the conspirators having been ever since in the hands of a faithful and vigilant Ministry, we cannot think it at all probable the conspiracy should be still carrying on ; or if any dregs of it should be yet remaining, that the Government cannot be easily secured by the civil authority, assisted with so great a number of troops as are at present on foot ; and therefore we cannot think ourselves justifiable to the Kingdom, whose rights and liberties we are intrusted to preserve, had we given our votes to this augmentation of troops, when no evident necessity or just occasion appeared to us for such an increase.

3rdly, Because the Act passed this season, to enable his Majesty to apprehend and detain in custody any person suspected of being engaged in any treasonable conspiracy for above twelve months (though that power had never been granted to the Crown before half that time at once, and that when there was an actual rebellion or an expected invasion) was so great a power added to the former authority of the Crown, that we cannot but think altogether sufficient to prevent any mischiefs from treasonable plots or practices, which may be attempted or carried on by any rebellious or disaffected persons without increasing the army, which in its present state is not submitted to, but as necessary for avoiding a greater evil.

4thly, Though the augmentation by this Bill is only for one year, yet, we fear, this will be a means for the continuing them in

perpetuity; for we think it probable there will at all times hereafter be easily found as good reason for continuing this increase, as there is now for making it.

5thly, Because we think, the greatest and only lasting security to his Majesty and his Government is in the hearts and affection of his subjects, and if the disaffection or discontents which have of late happened from some unfortunate proceedings, are thought by any to be an argument for raising more forces, we think it the duty of all good subjects, who wish well to his Majesty and our present happy establishment, to use their best endeavours for curing those discontents by removing or lessening the occasions thereof, and consequently that there should not be an augmentation of the army, which is already sufficiently burthensome to the subject, both by the great charge of maintaining them, and by the uneasiness to the place where they are quartered, because thereby the charge to the subject will be considerably increased, which, as we apprehend, ought most carefully to be avoided in our circumstances, when the load of taxes is already so great, and the Kingdom involved in so immense a debt, that nothing but the most prudent economy and good husbandry can give us any probable prospect of easing it; and therefore not being convinced of any real and just grounds for such increase of troops, do fear that this will not take away or lessen, but rather increase the discontents and disaffection of the people; and, in that respect, weaken his Majesty's Government in a greater degree than it will be strengthened by this addition of forces, allowing something for the possibility of false musters.

Sir William Dawes, Archbishop of York.

John Hervey, Earl of Bristol.

Nicholas Leke, Earl of Scarsdale.

Thomas Wentworth, Earl of Strafford.

George Henry Lee, Earl of Lichfield.

Francis Gastrell, Bishop of Chester.

John Leveson Gower, Lord Gower.

John Poulett, Earl Poulett.

Henry Paget, Earl of Uxbridge.

Thomas Trevor, Lord Trevor.

George Henry Hay, Lord Hay (Earl of Kinnoull).

John Ashburnham, Lord Ashburnham.

Thomas Foley, Lord Foley.

William Gordon, Earl of Aberdeen.

James Compton, Lord Compton.

William Cowper, Earl Cowper.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Peregrine Hyde Osborne, Lord Osborne.  
Allen Bathurst, Lord Bathurst.  
Robert Harley, Earl of Oxford and Mortimer.

## CCXXXIV.

MARCH 9, 1723.

When Layer was in the Tower under sentence (see Protest ccxxvii), a Committee of the House of Commons was nominated, in order to visit and confer with the convict, and thereupon report to the House. The Committee made its report on the 1st of March.—See Parliamentary History, vol. viii. p. 95, where the document is printed at length. In this, p. 107, Andrew Pancier, formerly a captain lieutenant in Lord Cobham's dragoons, is said to have deposed on oath, that one Skeene told him, not only that Atterbury and Lord North and Grey were the principal persons in the plot for surprising London, seizing the persons of the King and the Prince of Wales, and restoring the Pretender, but that Lords Strafford and Kinnoull were privy to the same plot. On this report being published, a motion was made that Pancier and Skeene should be brought to the Bar of the House, which motion was negatived by 64 to 29.

The following protest was inserted.

1st, Because the Earl of Kinnoull and the Earl of Strafford having severally complained to the House, that they find themselves reflected on in a printed deposition of one Andrew Pancier, wherein he deposeth, ‘that one Skeene (now in custody) had acquainted him, among other things, that the said Earls knew of the late conspiracy, and were concerned in the management of it here;’ and the said Earls alleging, that ‘they did not see by the report, in which that deposition is found, that the said Skeene, though in the hands of the Government, had been so much as questioned touching the said hearsay’ (which observation we find to be true), we think it highly reasonable to have complied with the motion and request of the said Lords, that the said Pancier and Skeene might be examined at the Bar of this House in relation to that matter only; the like request, for the better clearing the reputation of any noble Lord, when he hath thought it unjustly aspersed, having never been denied, that we know of; but on the contrary, it was, not long since, granted in the case of the Earl of Sunderland, though the examination which he thought reflected on his honour was not come into print when he made his complaint; which, according to

## CCXXII.

MARCH 3, 1722.

Immediately after amending the Standing Order relative to protesting the Lords reviewed the reasons given in the protest of the 19th of February on the Navy Debt, and excised a portion by 45 votes to 18.

The following protest is inserted.

Because when we were giving reasons against putting off the further consideration of the causes of the Navy debt by long adjournments, probably for the whole Session, as we thought no reason could be more proper than that the subject-matter of that enquiry was not exhausted, but that very much material business remained to be considered on that head; so we did, and do yet conceive, that the following that general assertion, with an enumeration of the particular matters which yet did remain to be enquired into (as well such as arose from papers already before the House, as other, which we were well assured would arise in the further progress of that business from papers designed to be called for) did make the said general argument, which stands unexpunged, more strong, as well as more fair and candid, by shewing it was well founded upon particulars; and although the House has not thought fit to permit the said enumeration of particulars to stand on the Journal, yet, we conceive, we have attained this advantage, by having entered them, that it cannot be objected to us now, that we generally affirmed more business of consequence remained for that Committee to do, without being able to instance or specify what in particular.

Sir William Dawes, Archbishop of York.  
Thomas Wentworth, Earl of Strafford.  
John Hervey, Earl of Bristol.  
Francis Gastrell, Bishop of Chester.  
William North, Lord North and Grey.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Francis Atterbury, Bishop of Rochester.  
Henry Paget, Earl of Uxbridge.  
William Gordon, Earl of Aberdeen.  
William Cowper, Earl Cowper.  
Allen Bathurst, Lord Bathurst.  
Thomas Foley, Lord Foley.  
Rowland St. John, Lord St. John.  
Thomas Trevor, Lord Trevor.  
George Henry Lee, Earl of L.

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kingdom the

on the 9th day of this instant March, to a resolution of the like nature.

Nicholas Leke, Earl of Scarsdale.  
 William Cowper, Earl Cowper.  
 Robert Benson, Lord Bingley.  
 Allen Bathurst, Lord Bathurst.  
 William Legge, Earl of Dartmouth.  
 John Leveson Gower, Lord Gower.  
 Thomas Wentworth, Earl of Strafford.  
 William Craven, Lord Craven.  
 George Henry Lee, Earl of Lichfield.  
 John Poulett, Earl Poulett.  
 Francis North, Lord Guilford.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Charles Butler, Lord Weston (Earl of Arran).  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Thomas Foley, Lord Foley.  
 Heneage Finch, Earl of Aylesford.  
 James Compton, Lord Compton.  
 Henry Paget, Earl of Uxbridge.  
 Brownlow Cecil, Earl of Exeter.

### CCXXXVI.

MARCH 29, 1723.

On the 8th of March, the House of Commons took into consideration the report of the Committee appointed to examine Christopher Layer and others, and resolved to proceed by Bill of Pains and Penalties against John Plunkett (carried by 239 to 130), George Kelly alias Johnson, carried by 280 to 111, and Atterbury, Bishop of Rochester, carried without a division, a motion for adjournment being lost by 285 to 152. The Bill was brought in on the 22nd of March, read, and a copy of it sent to the Bishop of Rochester. The Bishop thereupon on the 25th of March, wrote a letter to the Speaker, in which he begged to have the services of certain persons as his counsel and solicitors. On the 29th of March, however, he petitions the Lords for their advice on the following point. By a standing order of the House dated the 20th of January, 1673, no Lord was allowed to appear by counsel before the House of Commons to answer any accusation there. On receiving the petition a motion was made 'that the Bishop of Rochester being a Lord of Parliament, ought not to answer or make his defence by counsel or otherwise in the House of Commons to any Bill or accusation there depending.' After a debate (in which Lord Harcourt alleged that in this affair, the Commons did not act as a court of judicature, but as a part of the legislature, and the Duke of Wharton had ridiculed the Bishop for having asked the Speaker to assign him counsel, though he now petitioned the Lords not to give him leave to be heard), the motion was rejected by 78 to 32.

The following protest was inserted.

1st, Because, we conceive, the permitting the Lord Bishop of Rochester to make his defence in the House of Commons would be directly contrary to the words and meaning of the standing order of the House, bearing date the 20th of January, 1673, which expressly and clearly orders, 'that for the future no Lord (which extends to Lords spiritual as well as temporal) shall go down to the House of Commons, or send his answer in writing, or appear by council to answer any accusation there;' and it is observable that this order is worded absolutely, and not qualified by the words 'without leave of the House' as the following standing order of the 25th of November, 1696, which prohibits Lords from going into the House of Commons while the House is sitting, is qualified; from which different penning, as well as from the preamble of the said first-mentioned order, which shews the mischief designed to be prevented was the giving leave, in cases of Lords desiring it, to appear or answer accusations in the House of Commons, we infer that the said order of January, 1673, was meant as a rule for all future times, that if leave should be asked by a Lord of Parliament to answer or make a defence to an accusation (in any form, as we conceive) in the House of Commons, it ought to be denied, as deeply intrenching on the privileges of this House.

2ndly, The said standing order, in affirmation of which the question was moved, ought to be of the greater weight, in our opinions, it having been founded on the consideration and report of a committee (to whom it was particularly referred to consider the practice of Lords desiring leave to answer accusations in the House of Commons), on the perusal of precedents in that committee, and upon serious consideration and perusal of the same precedents in the House itself.

3rdly, We cannot apprehend but that a Bill, by which crimes are charged and a preparation is made to inflict penalties, if the crimes are proved, contains clearly an accusation, especially when a day is given, and counsel allowed by the House of Commons to the person against whom the crimes are alleged to make a defence to the same; which proceeding, though in the legislative capacity of that House, carries in it all the essential parts of a judicial trial; and we therefore conceive, that this House ought

to be more jealous of their members answering in the House of Commons an accusation in this form, rather than in any other, since thereby they submit themselves to try the point of their being guilty or not guilty in the House of Commons, and that in order to receive the sentence and judgment of that House by passing or rejecting the Bill; and this, in our opinions, more deeply intrenches, as the standing order expresseth it, on the privileges of this House, than a Lord's going down to the House of Commons, during a debate there, to prevent an impeachment, doth; the latter being only to prevent an accusation, but the former is, as we clearly conceive, to answer an accusation there; the very thing prohibited by the standing order.

4thly, We think the accusation which Lords are prohibited to answer, by this standing order, must be chiefly, if not only understood of an accusation, couched in a Bill (as in the present case), since we never heard that any Lord of Parliament did at any time answer to, or defend in person, or by counsel, an impeachment in the House of Commons, though they may have gone down to that House by connivance to prevent such impeachment; and therefore Lords defending themselves in the House of Commons against an impeachment, could not be the mischief intended to be cured by the said standing order.

5thly, That the House of Commons, on Bills to inflict penalties, do proceed, strictly speaking, in their legislative capacity, is certainly true; and yet it is plain to us, that in reality they partake in such cases with the House of Lords in the judicature, or which is all one, in trying and adjudging offenders to punishment; and though the Lords should, in very extraordinary cases, think fit to concur in such a method of punishing, yet it is, in our opinions, going by much too far for the Lords to permit any of their body to make defence in the House of Commons either by himself or counsel; which is letting themselves down to a very great degree, and giving an unnecessary encouragement to that manner of proceeding; and when the Lords have so far submitted to this course, we think there is little reason to expect, that afterwards the Commons will ever appear at the Lords' Bar as accusers, when they can by this way make themselves as much judges, even over Lords, as in this proceeding by Bill the Lords themselves are.

6thly, Though Lords, by not being permitted to appear, either in person or by counsel, to defend themselves in the House of Commons, may be thought possibly to lose some advantage in their defence, yet, we think, it was and is the true meaning of the standing order first mentioned, that a Lord should rather suffer something of inconvenience in that particular, and commit his cause to God and the justice of the House, of which he is a Member, and who are his proper judges, than in any degree debase or derogate from the legal state and dignity of the Lords in general.

7thly, Although there be, as we conceive, a very manifest and important difference in reason, as to the matter of this question, between the case of Bishops (who are declared by the standing order of the 23rd of May, 1628, to be only Lords of Parliament, and not Peers, for they are not of trial by nobility), and that of the Peers of the Realm, who undoubtedly, for matters of treason and felony, are triable by their Peers only; yet since, by the standing order first mentioned, Bishops are as much and as clearly prohibited to answer an accusation in the House of Commons, as the Peers and Lords temporal are, we cannot but apprehend, with the deepest concern, that this case may be used hereafter as a precedent (though, as we take it, far from being a precedent in point), to bring by degrees the Peers of the Realm to defend themselves against accusations of the like nature in the House of Commons; which if once brought to be a practice, we are of opinion, that the Peers of the Realm would in great measure be degraded from their Peerages, and so by weakening and debasing the order of nobility, which in its institution was meant, or at least hath proved a lustre and security to the Crown, the safety as well as dignity of the Crown itself may be hereafter in a great degree impaired.

Nicholas Leke, Earl of Scarsdale.  
William Legge, Earl of Dartmouth.  
William Cowper, Earl Cowper.  
John Leveson Gower, Lord Gower.  
Allen Bathurst, Lord Bathurst.  
Charles Bruce, Lord Bruce of Whorlton.  
Francis North, Lord Guilford.  
Thomas Trevor, Lord Trevor.  
James Compton, Lord Compton.

Thomas Wentworth, Earl of Strafford.  
 George Henry Lee, Earl of Lichfield.  
 Heneage Finch, Earl of Aylesford.  
 John Arundell, Lord Arundell of Trerice.  
 John Poulett, Earl Poulett.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 John Ashburnham, Lord Ashburnham.  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 Robert Benson, Lord Bingley.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).

## CCXXXVII.

APRIL 5, 1723.

On this day, a petition was presented to the House of Lords, in which the Bishop of Rochester complained of the ill usage to which he had been subjected on Thursday, the 4th of April. The petitioner averred that the sub-lieutenant of the Tower came into the room while he (Atterbury) was at dinner, and said that he must search him. On being required to show his warrant, he answered that he had a verbal order, but refused to say from whom. The petitioner then goes on to state that he was searched by violence, deprived of everything he had in his possession, and treated insolently and cruelly. On this a motion was made, that Colonel Williamson the deputy-lieutenant, Mr. Serjeant the Gentleman Porter, and the two warders who attended Colonel Williamson should be summoned to the Bar of the House, to give an account of the matters mentioned in the petition. The motion was negatived by 56 against 24, and the following protest was inserted.

1st, Because the petitioner, as a Lord of Parliament and member of this House, though no Peer of the Realm, hath an unquestionable right, under all circumstances, to the justice and protection of this House against any persons whatsoever, who, during the sitting of Parliament, commit any act of violence to his person or property, which this House may adjudge to be a breach of his privilege; and therefore, as we conceive, the facts alleged in the petition, if the same are true, and no account given of them by the persons concerned to the satisfaction of this House, are an unwarrantable attempt upon a member of this House. And we think, that in justice to the petitioner, and to the honour and privileges of this House, there ought to have been an immediate and impartial examination by this House of the persons concerned, we finding no instance on the Journals of this House, where any member

of the House has complained, by petition or otherwise, of the least violence or injury to his person, during the time of privilege, wherein the House hath not ordered an examination of the facts so complained of.

2ndly, Because it appears to us that the petitioner being under imprisonment, and a Bill depending against him in the House of Commons, that House having allowed him the benefit of counsel and solicitors for making his defence, were proceeding against the petitioner on that Bill, in all probability, at the very time the matters complained of were transacted; and as that Bill may soon come under the consideration and judgment of this House, the seizing the petitioner's letter to his solicitor, or any thing which may concern his defence, we are of opinion, ought to have been examined into; it being, as we conceive, against the rules of natural justice, the laws of all nations, and the fundamental and known laws of this Realm, that any papers or other things in the lawful possession of the person so accused, and which may relate to his defence, should be forcibly wrested from him; or that any person, and more especially a Lord of Parliament, being under imprisonment and accusation for high treason, should by terror or other violence be, without just cause, in any degree disturbed in or disabled from making his defence.

3rdly, Because the refusing to enter into the examination of the matters complained of by the petition may, in our opinions, be construed to be a justification of the proceedings therein alleged, even though there was not a reasonable occasion for the same; and it being suggested in the petition, 'that the deputy-lieutenant of the Tower did affirm to the prisoner, upon his salvation, that he had a verbal order from the Ministry, though he refused to say from whom, and not pretending that what he did was by his own authority,' we are of opinion, that it was of the greatest consequence to the honour of his Majesty's Government, that this House should have examined into this proceeding; and the rather, because we conceive it to be of the highest importance to the free and impartial administration of justice, that this House should on all occasions discountenance all appearances of force, especially on a Lord of Parliament imprisoned and accused of high treason.

4thly, Because, we think, that if an unjustifiable violence be

offered to the person or privilege of any member of this House, and not examined into, it may prove an encouragement to commit the like, if not further abuses on any other member of this House in future times.

Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 George Henry Lee, Earl of Lichfield.  
 William Cowper, Earl Cowper.  
 John Poulett, Earl Poulett.  
 Robert Benson, Lord Bingley.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Foley, Lord Foley.  
 Charles Bruce, Lord Bruce of Whorlton.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 John Ashburnham, Lord Ashburnham.  
 Francis North, Lord Guilford.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Nicholas Lechmere, Lord Lechmere.

## CCXXXVIII.

APRIL 29, 1723.

John Plunkett, alias Rogers, was a Jesuit, who had been concerned in many Jacobite intrigues during the last years of Anne. During the course of the conspiracy in which Atterbury was involved, Plunkett acted as an agent between the adherents of James on the continent, and those in England. When the facts of the plot were revealed by the Regent of France (the Duc de Bourbon) to Sir Luke Schaub, the English Minister at Paris, and the letters of the several conspirators were seized and deciphered, Plunkett among others was arrested, and proceeded against by Bill of Pains and Penalties. The Bill inflicted imprisonment for life, and forfeiture of lands and goods, passed the third reading by 87 to 34, and received the royal assent on the 27th of May.

The following protest was inserted.

1st, Because Bills of this nature, as we conceive, ought not to pass but in case of evident necessity, when the preservation of the State plainly requires it; which we take to be very far from the present case, the conspiracy having been detected so long since, and the person accused seeming to us very inconsiderable in all respects, and who, from the many gross untruths, it now appears, he has wrote to his correspondence abroad, must appear to have been an impostor and deceiver even to his own party.

2ndly, Proceedings of this kind, tending to convict and punish,

are in their nature, though not form, judicial; and do let the Commons, in effect, into an equal share with the Lords in judicature; which the Lords ought to be very jealous of doing, since the power of judicature is the greatest distinguishing power the Lords have; and there will be little reason to hope, that if Bills of this nature are given way to by the Lords, the Commons will ever bring up impeachments, or make themselves accusers only, when they can act as judges.

3rdly, This Bill, in our opinion, differs materially from the precedents cited for it; as to the case of Sir John Fenwick, it is plain, by the preamble of that Bill, that the ground most relied on to justify proceeding against him in that manner was, that there had been two legal witnesses proving the high treason against him, that a Bill was found against him on their evidence, and several times appointed him for a legal trial thereon, in the ordinary course, which he procured to be put off, by undertaking to discover, till one of the evidences withdrew; so that it was solely his fault, that he had not a legal trial by jury; all which circumstances not being in the present case, we take it, they are not at all to be compared to one another.

4thly, As to the Acts which passed to detain Counter and others concerned in the conspiracy to assassinate the late King William, of glorious memory, we conceive, those Acts were not, in their nature, Bills of Attainder, as this is, but purely to enable the Crown to keep them in prison, notwithstanding the laws of liberty; whereas this is a Bill to inflict pains and penalties, and does import a conviction and sentence on the prisoner, not only to lose his liberty, but also his lands and tenements, goods and chattels, of which he having none, as we believe, we cannot apprehend why it was inserted, and this Bill now drawn on the plan of Counter's, &c. unless it was to make a precedent for such forfeitures, in cases of Bills which may hereafter be brought to convict persons, who have great estates, upon evidence which does not come up to what the law in being requires.

5thly, If there be a defect of legal evidence to prove this man guilty of high treason, such defect always was; and we think if Bills of this nature, brought to supply original defects in evidence, do receive countenance, they may become familiar, and then many an innocent person may be reached by them, since it is hard to dis-

tinguish, whether that defect proceeds from the cunning and artifice or from the innocence of the party.

6thly, This proceeding by Bill does not, in our opinions, only tend to lay aside the judicial power of the Lords, but even the use of juries; which distinguishes this nation from all its neighbours, and is of the highest value to all who rightly understand the security and other benefits arising from it; and whatever tends to alter or weaken that great privilege, we think, is an alteration of our constitution for the worse, though it be done by Act of Parliament; and if it may be supposed, that any of our fundamental laws were set aside by Act of Parliament, the nation, we apprehend, would not be at all the more comforted from that consideration that the Parliament did it.

7thly, It is the essence of natural justice, as we think, but it is most surely the law of the realm, that no person should be tried more than once for the same crime, or twice put in peril of losing his life, liberty, or estate; and though we acquiesce in the opinion of all the judges, 'that if this Bill pass into a law, Plunkett cannot be again prosecuted for the crimes contained in the preamble of the Bill,' yet it is certain, that if a Bill of this kind should happen to be rejected by either House of Parliament, or by the King, the person accused might be attacked again and again, in like manner, in any subsequent Session of Parliament, or indicted for the same offence, notwithstanding that either House of Parliament should have found him innocent, and not passed the Bill for that reason; and we conceive it a very great exception to this course of proceeding, that a subject may be condemned and punished, but not acquitted by it.

8thly, We think it appears in all our history, that the passing Bills of Attainder, as this, we think, in its nature is (except as before is said, in cases of absolute and clear necessity), have proved so many blemishes to the reigns in which they passed; and therefore we thought it our duty in time, and before the passing this Bill, as a precedent, to give our advice and votes against the passing it, being very unwilling that any thing should pass which, in our opinions, would in the least derogate from the glory of this reign.

9thly, We apprehend it to be more for the interest and security of his Majesty's Government, that Bills of this nature should not pass than that they should; since persons who think at all cannot

but observe, that in this case some things have been received as evidence, which would not have been received in any court of judicature; that precedents of this kind are naturally growing (as, we think, this goes beyond any other which has happened since the revolution) and if from such like observations they shall infer, as we cannot but do, that the liberty and property of the subject becomes, by such examples, in any degree more precarious than they were before, it may cause an abatement of zeal for a government founded on the Revolution, which cannot, as we think, be compensated by any the good consequences which are hoped for by those who approve this Bill.

Nicholas Leke, Earl of Scarsdale.  
William Craven, Lord Craven.  
George Verney, Lord Willoughby de Broke.  
John Poulett, Earl Poulett.  
Thomas Wentworth, Earl of Strafford.  
Thomas Foley, Lord Foley.  
William Cowper, Earl Cowper.  
William Berkeley, Lord Berkeley of Stratton.  
Allen Bathurst, Lord Bathurst.  
Heneage Finch, Earl of Aylesford.  
John Leveson Gower, Lord Gower.  
Arthur Annesley, Earl of Anglesey.  
Charles Bruce, Lord Bruce of Whorlton.  
George Henry Lee, Earl of Lichfield.  
Francis North, Lord Guilford.  
Charles Butler, Lord Weston (Earl of Arran).  
William Legge, Earl of Dartmouth.  
George Henry Hay, Lord Hay (Earl of Kinnoull).  
John Ashburnham, Lord Ashburnham.  
Nicholas Lechmere, Lord Lechmere.  
Samuel Masham, Lord Masham.  
George Brudenell, Earl of Cardigan.  
William Greville, Lord Brooke.  
Henry Paget, Earl of Uxbridge.  
Brownlow Cecil, Earl of Exeter.  
James Compton, Lord Compton.  
Robert Benson, Lord Bingley.  
Peregrine Hyde Osborne, Lord Osborne.  
Francis Gastrell, Bishop of Chester.  
Robert Harley, Earl of Oxford and Mortimer.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Henry Paget, Earl of Uxbridge<sup>1</sup>.  
Thomas Trevor, Lord Trevor.

<sup>1</sup> The Earl of Uxbridge has inserted his name twice.

## CCXXXIX.

MAY 2, 1723.

The Bill of Pains and Penalties against Kelly followed that against Plunkett. George Kelly was a nonjuring clergyman, who went by the alias of Johnson, and had been employed by Atterbury as his amanuensis, in the correspondence which the bishop held with the Pretender. As the conviction of Kelly was supposed to compromise the bishop, the greatest efforts were made to defeat this particular Government prosecution. Kelly was arrested on the 21st of May, 1722, and contrived to burn his papers before he was captured. On this day, the 2nd of May, 1723, a motion was made that the counsel for the prisoner (Kelly) may be at liberty to proceed, as they desired, to examine witnesses, to prove, by several circumstances, that the letters dated the 20th of April, 1722, given in evidence for the Bill, were not dictated by the Bishop of Rochester to the prisoner George Kelly. This motion was rejected by 82 to 47, and the following protest was inserted.

1st, Because it was insisted on by the prisoner's counsel, that the proof desired was necessary to his defence, and if allowed to be made would contribute to satisfy the House of the prisoner's innocence of the crimes charged on him by the Bill; for which reason alone, if there was no other, we think the witnesses ought to have been examined, it being, in our opinions, against the constant course and rules of justice, in criminal proceedings of all kinds, to preclude the prisoner's defence by refusing to hear his witnesses, if they are legal and competent, and in derogation of the honour and justice of the House, on this occasion, to anticipate the judgment of the House, in the least circumstance which the prisoner or his council insist on to be material to his defence, and which may, if proved, be of weight in the consideration and judgment of the House.

2ndly, It appears to us to tend directly to prove the guilt or innocence of the prisoner, to discover, whether the Bishop of Rochester did dictate to the prisoner the letters mentioned in the question; because it was declared to the House by the counsel for the Bill, in opening the charge against the prisoner, that the letters, though wrote by the prisoner, were dictated to him by a greater person; and although the counsel for the Bill when called upon, did not think fit to name that greater person, yet it being suggested in the report of the House of Commons, communicated to this House, and it being universally supposed hitherto, that the Bishop of

Rochester did dictate the said letters to the prisoner, it became, in our opinions, incumbent on the prisoner to give the House what satisfaction he could in that particular, the same being made a circumstance and part of the accusation against him, and if falsified, or rendered incredible, might influence the judgment of the House in other circumstances.

3rdly, Because the declaration of Philip Neynoe deceased, though not signed or sworn by him, hath been allowed by the House to be read and given in evidence, in proof of the particular facts charged on the prisoner in the Bill; in which declaration the prisoner is expressly charged by the said Neynoe to have frequently told him, 'that the Bishop of Rochester held correspondence with the Pretender and the Pretender's agents, and that the prisoner was employed by the Bishop in writing for him, and carrying on the said correspondences, and that he had several times left Mr. Kelly at the Bishop's door, when Mr. Kelly went into the Bishop's house, and stayed there an hour or two, and upon coming back to him, that the prisoner made apologies for staying so long, and told him he had been writing the Bishop's letters, which he always apprehended to be the foreign correspondence of the Bishop with the Pretender's agents;' for which reason also, we conceive, the proof desired ought to have been received, because it may be thought a denial of justice, by this House, to the prisoner, not to permit him to answer, even by legal evidence, the particular and direct evidence, which the House hath allowed to be given against him.

4thly, Although the prisoner may be guilty of a treasonable correspondence, if he wrote the letters mentioned in the question, and the same were not dictated to him by any person whatsoever, yet the facts charged in the Bill, having been endeavoured to be proved, not by direct proof of the facts themselves, but by circumstances, in our opinions, the prisoner's defence must be applied to answer the several circumstances; and it is, as we conceive, equally unjust to deny him the liberty of falsifying that circumstance of his writing the letters, being dictated to him by the Bishop, as it would be, to refuse to allow him to prove that the said letters were not, or could not be wrote, or sent to the persons to whom they are suggested or charged to have been wrote, or sent, or to refuse him to prove by circumstances, that the prisoner himself did not or could not write the same, at the particular times and places the same are suggested

to be so wrote or sent by him, or to deny him liberty to falsify, by circumstances, any other circumstance relating to the supposed treasonable correspondence charged on him by the Bill.

5thly, The counsel for the Bill having alleged, as one reason against the examinations desired, ‘that they were not prepared to answer that evidence,’ might have been a ground for the House to have allowed them a reasonable time for such preparation; but in our opinions, that consideration ought not to weigh against the prisoner’s giving the evidence to the House which he was prepared to give, especially since it was alleged, that the examinations now desired, were desired on the prisoner’s part to have been made at the Bar of the House of Commons, and thereby so long ago publicly notified by the prisoner.

6thly, Because the refusal of the proof of any circumstance of the prisoner’s defence, if such refusal be not just, must in its consequence affect the justice of the whole proceeding against the prisoner, because it deprives the House of the liberty of forming a judgment upon the whole case, and tends, so far as that particular goes, to subject this proceeding against the prisoner to the objection of partiality, which is most highly dishonourable to this House, especially considering the latitude which hath been allowed in other parts of the examination on this occasion.

John Arundell, Lord Arundell of Trerice.  
James Cecil, Earl of Salisbury.  
John Leveson Gower, Lord Gower.  
Thomas Fermor, Earl of Pomfret.  
George Henry Hay, Lord Hay (Earl of Kinnoull).  
Francis North, Lord Guilford.  
John Poulett, Earl Poulett.  
George Compton, Earl of Northampton.  
Thomas Wentworth, Earl of Strafford.  
William Feilding, Earl of Denbigh.  
William Craven, Lord Craven.  
Nicholas Leke, Earl of Scarsdale.  
George Henry Lee, Earl of Lichfield.  
Philip Wharton, Duke of Wharton.  
William Stawell, Lord Stawell.  
Arthur Annesley, Earl of Anglesey.  
George Brudenell, Earl of Cardigan.  
William Cowper, Earl Cowper.  
Allen Bathurst, Lord Bathurst.  
Thomas Trevor, Lord Trevor.  
Francis Gastrell, Bishop of Chester.

Peregrine Hyde Osborne, Lord Osborne.  
 Thomas Foley, Lord Foley.  
 Samuel Masham, Lord Masham.  
 James Compton, Lord Compton.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 George Verney, Lord Willoughby de Broke.  
 Nicholas Lechmere, Lord Lechmere.  
 William Greville, Lord Brooke.  
 William Legge, Earl of Dartmouth.  
 Edward Leigh, Lord Leigh.  
 Robert Benson, Lord Bingley.  
 Heneage Finch, Earl of Aylesford.  
 William Berkeley, Lord Berkeley of Stratton.  
 Henry Paget, Earl of Uxbridge.  
 Thomas Willoughby, Lord Middleton.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 John Ashburnham, Lord Ashburnham.  
 Brownlow Cecil, Earl of Exeter.  
 Charles Butler, Lord Weston (Earl of Arran).

## CCXL.

MAY 3, 1723.

On the third reading of the Bill of Pains and Penalties against George Kelly, a rider was offered, to allow Kelly to depart his Majesty's dominions on giving security not to return again without license. This was rejected by 83 votes to 38, thirty-six Peers protesting. The third reading was then passed by 79 to 41. Kelly's speech in his own defence will be found in Parliamentary History, vol. viii, p. 245.

The following protest was inserted.

1st, Because, we think, there is no reason for the legislature to pass a law, *ex post facto*, to punish this person for the treasonable correspondence he is accused of; he being in custody, and may be brought to a legal trial in one of the courts of justice.

2ndly, We conceive the want or defect of such clear and plain evidence as, by the laws of this Kingdom, is required to convict any person of high treason, no sufficient reason to warrant the exercise of the legislative power in making a new law for his punishment, because such laws being made for the protection of innocent persons from suffering by false, uncertain, or doubtful evidence, every subject is entitled to the benefit of those laws, when he shall fall under an accusation of high treason.

3rdly, Because, as we conceive, by the rules of natural justice,

laws ought to be first made, as directions for men's actions and obedience, and punishment inflicted for putting those laws in execution against offenders; and that therefore punishing by a law made after the offence committed is not agreeable to reason or justice, except only in the case of real and apparent necessity to prevent the immediate ruin of a government, which we do not think to be the present case, or can bear any resemblance to it.

4thly, Because the proceedings of the legislative power, in making laws, can be governed by no rule but that of their own discretion and pleasure; and therefore the making laws to inflict pains and penalties on particular persons must, as we conceive, tend to expose the lives, liberties, and properties of the subjects to an arbitrary discretion; and consequently render them precarious in the enjoyment of those blessings, which by our excellent Constitution and Government they have always had an uncontrollable right to hold and enjoy, till forfeited for some crime, and the person offending legally convicted thereof, upon such full and positive proof as the laws of this Kingdom do require.

5thly, Because, as we conceive, it would be of dangerous consequence to the safety of innocent persons to allow copies of letters taken by the clerks of the post-office, though sworn by them to be true copies, to be given in evidence against any person accused of high treason, especially when such copies are not compared with the originals after they were taken, and the original letters forwarded on by them, and not produced, because the originals not being produced, such person is deprived of an opportunity of falsifying those copies; and though there should be any mistake committed by the clerk in copying, whether wilfully, or by negligence, such mistake cannot be detected for want of the original writings to compare the copies with.

6thly, Because the proof of letters or other writing in criminal prosecutions, by similitude and comparison of hands, being, as we conceive, a very slight and weak evidence, because hands may be too easily counterfeited, and the persons examined cannot speak positively, but to their belief, and therefore not liable to be prosecuted for perjury, hath, as we conceive, very justly been discouraged in such times, when the administration of justice hath been most impartial; and convictions of high treason, grounded on

such evidence, have been reversed, by Act of Parliament, for that and other reasons.

Thomas Fermor, Earl of Pomfret.  
 William Stawell, Lord Stawell.  
 George Compton, Earl of Northampton.  
 Arthur Annesley, Earl of Anglesey.  
 Francis Gastrell, Bishop of Chester.  
 Nicholas Leke, Earl of Scarsdale.  
 William Craven, Lord Craven.  
 Thomas Wentworth, Earl of Strafford.  
 William Feilding, Earl of Denbigh.  
 Francis North, Lord Guilford.  
 Philip Wharton, Duke of Wharton.  
 Thomas Willoughby, Lord Middleton.  
 John Poulett, Earl Poulett.  
 Heneage Finch, Earl of Aylesford.  
 William Legge, Earl of Dartmouth.  
 Allen Bathurst, Lord Bathurst.  
 George Henry Lee, Earl of Lichfield.  
 James Cecil, Earl of Salisbury.  
 William Greville, Lord Brooke.  
 Charles Butler, Lord Weston (Earl of Arran).  
 John Leveson Gower, Lord Gower.  
 Peregrine Hyde Osborne, Lord Osborne.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 William Berkeley, Lord Berkeley of Stratton.  
 James Compton, Lord Compton.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Foley, Lord Foley.  
 Henry Paget, Earl of Uxbridge.  
 Samuel Masham, Lord Masham.  
 Thomas Trevor, Lord Trevor.  
 George Brudenell, Earl of Cardigan.  
 John Arundell, Lord Arundell of Trerice.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 George Verney, Lord Willoughby de Broke.  
 Brownlow Cecil, Earl of Exeter.  
 John Ashburnham, Lord Ashburnham.  
 Robert Benson, Lord Bingley.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).

## CCXLI.

MAY 7, 1723.

Bishop Atterbury was arrested at the Deanery of Westminster on the 24th of August, 1722, and committed to the Tower. (See Stanhope's History, vol. ii. p. 37, chap. xii.) The whole proceedings against the



Bishop will be found in Howell's State Trials, vol. xvi. p. 323, sqq. There was no little alarm that the proceedings against Atterbury would be exceedingly unpopular. It appears that great clamour was raised, and rumours were circulated that the Bishop was treated with great and unnecessary harshness. The complicity of the Bishop, however, in the plot, which had been revealed to Sir Luke Schaub, and by him communicated to Lord Carteret, was proved not merely by the evidence of handwriting, but by the celebrated incident of the dog which had been given to Mrs. Atterbury by Lord Mar. The question 'whether Atterbury had really corresponded with the Pretender' is set at rest by the publication of his letters,—Stuart Papers, vol. i. It is known that immediately after his exile he openly attached himself to the Stuart party.

At this stage of the proceedings, Peter Thouvois, a clerk in the post office, gave evidence as to certain letters in the names of Jones and Illington (cant names which Atterbury had adopted), which letters had been stopped and copied at the post office under 9 Anne, cap. 10. Atterbury, in examining this witness, insisted on an answer to the question, 'whether he had any express warrant, under the hand of one of the Secretaries of State, for opening the said letters.' As the Bishop pressed the question, both he and the witness were ordered to withdraw, and the following motion was proposed by the Government: 'That it is the opinion of this House, that it is inconsistent with the public safety as well as unnecessary for the prisoner's defence, to suffer any further enquiry to be made upon this occasion into the warrants which have been granted by the Secretaries of State, for the stopping and opening of letters which should come or go by the Post, or into the methods that have been taken by the proper officers at the Post office, in obedience to such warrants.'

This motion was carried by 82 votes to 40, and the following protest was entered.

1st, We humbly apprehend, that in all criminal prosecutions the cross-examining of witnesses is necessary for the defence of the prisoner, and for the satisfaction of those who are to judge of the facts alleged against him in order to the discovering of truth, and detecting any fraudulent evidence which should be offered; and the resolution above recited does, in our opinions, debar the Bishop of Rochester, and every other person concerned, from asking any questions of the clerks of the Post-office, who are brought as witnesses to the Bar, relating to the stopping and opening the post-letters, though letters pretended to be stopped and opened at the Post-office are read as evidence against the prisoner: and we conceive, that the preventing any farther enquiry on these heads must lay this House under great difficulties, when they come to form a judgment on those letters, the validity of which will in a great measure depend on the proof given of their having been truly stopped and opened as asserted.

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2ndly, We apprehend it to be impossible for this House to determine, that the enquiry, which is desired is unnecessary to the defence of the prisoner, till he shall come to make the application ; and, we conceive, he should have the liberty of asking what questions he or his counsel think proper of the clerks of the Post-office, relating to the stopping and opening of letters, without acquainting the House what use he intends to make of their answers ; and this appears to us to be highly reasonable, essential to justice, and warranted by the methods which this House has hitherto allowed the counsel for the support of the Bill to proceed in, who have, during the whole course of this examination, reserved the application of the evidence they have offered till they should judge convenient to make it.

Nicholas Leke, Earl of Scarsdale.  
George Compton, Earl of Northampton.  
John Poulett, Earl Poulett.  
Arthur Annesley, Earl of Anglesey.  
Thomas Foley, Lord Foley.  
William Craven, Lord Craven.  
Allen Bathurst, Lord Bathurst.  
John Ashburnham, Lord Ashburnham.  
Samuel Masham, Lord Masham.  
George Henry Lee, Earl of Lichfield.  
Charles Bruce, Lord Bruce of Whorlton.  
Henry Paget, Earl of Uxbridge.  
Brownlow Cecil, Earl of Exeter.  
James Compton, Lord Compton.  
John Leveson Gower, Lord Gower.  
William Greville, Lord Brooke.  
Robert Benson, Lord Bingley.  
George Henry Hay, Lord Hay (Earl of Kinnoull).  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Heneage Finch, Earl of Aylesford.  
George Brudenell, Earl of Cardigan.  
Peregrine Hyde Osborne, Lord Osborne.  
Francis Gastrell, Bishop of Chester.  
Thomas Fermor, Earl of Pomfret.  
Thomas Trevor, Lord Trevor.  
Charles Butler, Lord Weston (Earl of Arran).  
Thomas Wentworth, Earl of Strafford.  
Philip Wharton, Duke of Wharton.  
George Verney, Lord Willoughby de Broke.  
William Feilding, Earl of Denbigh.

## CCXLII.

MAY 11, 1723.

The friends of the Bishop now attempted to procure the presence of Kelly in order to examine him as a witness on behalf of the prisoner. This step was taken after the Bishop had made a speech in his own defence.—*Parliamentary History*, vol. viii, p. 268. Lord Lechmere moved ‘that George Kelly, alias Johnson, now a prisoner in the Tower of London, be brought to the Bar of this House on Monday morning next (May 13) to be examined on oath, on the Bill,’ &c. The motion was seconded by the Earl of Carlisle, but was rejected by 80 votes to 40.

On this the following protest was inserted.

1st, Because we think it unquestionable, that the said Kelly is a competent legal witness to the matters charged by the Bill against the Bishop, and could not be legally refused to be sworn as such, if the Bishop were on his trial for the same in the ordinary course of justice, and that, whether the said Kelly was produced either for or against the Bishop; and, we conceive, if the counsel for the Bill had thought fit to have produced him in support of the Bill, that even no legal objection could have been made by the Bishop’s counsel against his being so produced and sworn, the Bill passed this House against the said Kelly not having received the royal assent, and there not being in the said Bill, in our opinions, any thing that can destroy even his legal testimony, when the same is passed into a law.

2ndly, Because the three letters, dated the 20th of April, 1722, supposed to contain treasonable correspondences with the Pretender and some of his agents, have been made the principal charge against the Bishop, and have been endeavoured to be proved to have been dictated to the said Kelly by the Bishop, at or about the time of their date; but this not being as yet done, as we think, by direct or positive proof by any living witness of the fact, but by circumstances only, we think it most proper, and most safe and just, to endeavour to discover the truth of that material fact, by the best evidence the nature of the thing can admit of; and that this House should not be left under the difficulties of judging on this extraordinary occasion from doubtful circumstances, if the fact may be cleared by certain positive proof, and the examination of a competent and a living witness upon oath at the Bar of this House.

3rdly, Because several living witnesses having been examined on oath at the Bar of the House, on behalf of the Bishop, in order to prove by their positive testimony and other circumstances, that the Bishop did not dictate or direct, or was any way privy to the writing the said letters, or any of them, which has, in our judgments, rendered it of yet greater importance, that the supposed writer of those letters should be brought under the most strict and solemn examination before the Bill has passed this House.

4thly, Because the said Kelly, though examined before Committees of both Houses of Parliament, and elsewhere, hath not, to our knowledge, been yet examined upon oath to the matters contained in this Bill; and it having appeared to us, in other instances on this occasion, particularly of Mrs. Barnes, examined for the Bill, and of Bingley against it, who have materially varied their examinations at the Bar of this House from their former examinations, at the same time declaring their former examinations were not taken and sworn to by them; we think it may be both dangerous and derogatory to the honour and justice of the House, not to examine on oath a person capable of discovering the matters of fact, on which the justice of the Bill against the Bishop must depend, and especially after the said Kelly hath declared in the most solemn manner, next to that of his being upon oath, that the Bishop did not dictate, or was privy to the writing the said letters, or any of them; and the Bishop himself, in his defence, having also, in the most solemn manner of asseveration, declared his innocence in this particular, and expressly referring to the former asseverations of the said Kelly, as we conceive, as a testimony in confirmation of his own asseverations.

5thly, Because we conceive, that the said Kelly was not only a legal witness for or against the Bishop, in the strictest construction of courts of judicature, but the examination of him upon oath, on this Bill, is in every respect whatsoever, in our judgments, less liable to objection than in any or most other evidences, which on this occasion have been allowed, because the Bill passed by this House against the said Kelly, if it obtains the royal assent, as is most probable, doth, in judgment of law, as hath been declared by the judges, acquit him of any further prosecution for the said treasons therein charged upon him; and there is no judgment or punishment inflicted upon him in the said Bill, which can,

when passed, destroy his capacity of giving evidence on any occasion ; and the same being passed by this House, and not passed the royal assent, leaves the said Kelly, in our opinions, under less influence either of hopes or fears, than such witnesses which have been examined on this occasion under commitments and charge of high treason ; and, as we conceive, less liable to that objection than the declaration of Philip Neynoe, which has been read against the Bishop, though never signed or sworn to by him, and the said Neynoe, some months since, drowned in endeavouring his escape, and which declaration appears to us to have been made by him under the strongest influences of guilt and terror.

6thly, We think the crimes charged in the Bill against the said Kelly are in their nature distinct and independent on those charged upon the Bishop, Kelly's guilt in writing the said treasonable letters proved upon him being the same, though the Bishop be altogether innocent in relation thereto ; for which reasons, as we conceive, this House did refuse to permit Kelly on his Bill to give evidence, that the Bishop did not dictate the said letters ; for which reason, we are of opinion, that the evidence which Kelly might have given touching the Bishop's dictating the said letters, or not, would have produced no consequence at all with regard to the Bill passed against himself, though it must necessarily have contributed to the proof of the guilt or innocence of the Bishop.

7thly, This House having, with great honour and justice, declared to several persons produced as witnesses on this occasion, 'that it was not required from them to depose to any thing which did or might tend to their own accusation,' the testimony of the said Kelly, if he had been examined on oath, we doubt not, would have been taken under the same just indulgence ; and if he had submitted to have been examined on oath to the matters of this Bill, such his examination being in that respect voluntary could not, in our opinions, have been construed as forced from him by the authority of this House ; and such testimony as he might have given would have remained under the consideration and judgment of this House, as to its credit and influence, on all circumstances, in the same manner, as the other evidence for and against the Bill still does.

Nicholas Leke, Earl of Scarsdale.  
Thomas Wentworth, Earl of Strafford.

William Cowper, Earl Cowper.  
 Nicholas Lechmere, Lord Lechmere.  
 William Legge, Earl of Dartmouth.  
 Thomas Fermor, Earl of Pomfret.  
 Allen Bathurst, Lord Bathurst.  
 James Cecil, Earl of Salisbury.  
 George Compton, Earl of Northampton.  
 Arthur Annesley, Earl of Anglesey.  
 Robert Benson, Lord Bingley.  
 Thomas Foley, Lord Foley.  
 William Berkeley, Lord Berkeley of Stratton.  
 Francis Gastrell, Bishop of Chester.  
 John Poulett, Earl Poulett.  
 Samuel Masham, Lord Masham.  
 George Brudenell, Earl of Cardigan.  
 James Compton, Lord Compton.  
 John Ashburnham, Lord Ashburnham.  
 George Verney, Lord Willoughby de Broke.  
 Francis North, Lord Guilford.  
 George Henry Lee, Earl of Lichfield.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Heneage Finch, Earl of Aylesford.  
 Charles Bruce, Lord Bruce of Whorlton.  
 John Leveson Gower, Lord Gower.  
 Henry Paget, Earl of Uxbridge.  
 Brownlow Cecil, Earl of Exeter.  
 William Greville, Lord Brooke.  
 William Craven, Lord Craven.  
 Thomas Willoughby, Lord Middleton.  
 Price Devereux, Viscount Hereford.  
 George Henry Hay, Lord Hay (Earl of Kinnoull).  
 William Feilding, Earl of Denbigh.  
 Philip Wharton, Duke of Wharton.

## CCXLIII, CCXLIV.

MAY 15, 1723.

The Bill of Pains and Penalties was read a third time and passed on this day. It occasioned a warm debate, Earl Poulett being the first speaker and commenting upon the extraordinary character of the proceeding. He was followed by Dr. Willis, Bishop of Salisbury, who dwelt upon the objection of those who held that a bishop could not be deprived and inhibited from the exercise of his function for life (9 George I, cap. xvii), and then proceeded to argue on the criminality of the Bishop. The Bishop of Chester (Dr. Gastrell) followed, who was answered by the Bishop of Lincoln (Dr. Gibson). The next speaker was the Duke of Wharton, whose speech will be found in Parliamentary History, vol. viii. p. 308. Lords Bathurst, Strafford, Trevor, Gower, and Cowper also

spoke against the Bill, while Lord Findlater and the Duke of Argyll, with the Earls of Peterborough and Cholmondeley, supported it. Lord Bathurst, commenting on the hostility of the Bishops to their brother prelate, said, that 'he could hardly account for the inveterate hatred and malice which some persons bore the learned and ingenious Bishop of Rochester, unless it was that they were intoxicated with the infatuation of some of the wild Indians, who fondly believe that they inherit not only the spoils, but even the abilities of the great enemy whom they kill.' There is a story told by Horace Walpole (*Royal and Noble Authors*, art. Wharton), that the Duke of Wharton called on Walpole the day before the third reading of the Bill, and by pretending regret that he had acted against the Court, got from the Minister information as to the strength and weakness of the case against Atterbury, and that he worked up the materials into the remarkable speech delivered on the 15th. The falsehood of this story has been proved by Wynne (*Miscellany of Law Tracts*, 1765), and the tale is further refuted by the appearance of Wharton's name among those annexed to the protests. The Bill received the royal assent on the 27th of May. Atterbury left England on the 18th of June (the Act fixed the day of banishment for the 25th of June), and died in Paris on the 15th of February, 1731.

The two following protests were inserted.

1st, Because the objection which we thought lay against the Bills of Plunkett and Kelly, 'that the Commons are thereby, in effect, let into an equal share of judicature with the Lords,' does hold stronger, as we apprehend, against the present Bill, since by means of it a Lord of Parliament is, in part, tried and adjudged to punishment in the House of Commons, and reduced to a necessity either of letting his accusation pass undefended in that House, or of appearing there, and, as we take it, derogating from his own honour, and that of the Lords in general, by answering and making his defence in the Lower House of Parliament.

2ndly, Because we are of opinion, that the Commons would be very far from yielding to the Lords any part of those powers and privileges which are properly theirs by the Constitution, in any form, or under any pretext whatsoever; and it seems to us full as reasonable, that the Lords should be as tenacious of the rights and privileges which remain to them as the Commons are on their part.

3rdly, We think this Bill, against a Lord of Parliament, taking its rise in the House of Commons, ought the rather not to have received any countenance in this House, for that, as it appeared to us by the printed votes of the House of Commons, that House had voted the Bishop guilty of all the matters alleged against him

in the Bill, before the Bill was brought into that House, and consequently before the Bishop had any opportunity of being heard; and although there be nothing absurd in passing such a vote, in order to their accusing by an impeachment, yet it seems to us absolutely contrary to justice, which ought to be unprejudiced, to vote any one guilty against whom they design to proceed in their legislative capacity, or in nature of judges, before the party has an opportunity to be heard on the Bill which is to ascertain the accusation, or it is so much as brought in.

4thly, We are of opinion, that no law ought to be passed on purpose to enact, that any one be guilty in law, and punished as such, but where such an extraordinary proceeding is evidently necessary for the preservation of the State; whereas the crime offered to be proved against the Bishop of Rochester is, as we apprehend, his partaking in a traitorous conspiracy against the Government; which conspiracy, by God's blessing, is detected, and, as we hope, disappointed, without the aid of such dangerous proceeding as we conceive this to be.

5thly, Because there are certain known and established rules of evidence, which are part of the law of the land, either introduced by Acts of Parliament, or framed by reason and the experience of ages, adjusted as well for the defence of the life, liberty, and property of the subject, as the punishment of the guilty; and therefore these rules are, or ought to be, constantly adhered to, in all courts of justice; and, as we conceive, should be also observed, till altered by law in both Houses of Parliament, whenever they try, judge, and punish the subject, though in their legislative capacity: but since, in many instances, in this and the two other proceedings by Bill, we have been taught by the opinion of the House, that these rules of evidence need not be observed by the Houses acting in their legislative capacity, we clearly take it to be a very strong objection to this manner of proceeding, that rules of law made for the security of the subject are of no use to him in it; and that the conclusion from hence is very strong, that therefore it ought not to be taken up, but where clearly necessary, as before affirmed; and we desire to explain ourselves so far, upon the cases of necessity excepted, as to say, we do not intend to include a necessity arising purely from an impossibility of convicting any other way.

6thly, If it be admitted, that traitorous correspondences in cyphers and cant-words may, to a degree, be discouraged by this sort of proceeding, in which persons, as we think, are convicted on a more uncertain evidence than the known rules of law admit of, yet, we are of opinion, that convenience will be much more than out-weighed by the jealousy it must of necessity, as we conceive, create in the minds of many of his Majesty's most faithful subjects, that their lives, liberties, and properties are not so safe, after such repeated examples, as they were before; and by the natural consequence of this apprehension, an abatement of their zeal for the Government may ensue, excepting such persons as have had more than ordinary opportunities of being well instructed in principles of the utmost duty and loyalty.

7thly, We cannot be for the passing this Bill, because the evidence produced to make good the recital of it, or that the Lord Bishop of Rochester is guilty of the matter he therein stands accused of, is, in our opinion, greatly defective and insufficient, both in law and reason, to prove that charge; the evidence consisting altogether, to the best of our observation, in conjectures arising from circumstances in the intercepted letters, or on a comparison of hand-writings, resting on memory only, and there being, as we think, no proof of the Bishop's knowing of, or being privy to any of the said correspondence; and as to the principal part of the charge against the Bishop, and on which, as we think, all the rest does depend, viz. the dictating the letters of the 20th of April, 1722, which the House of Lords seem to have determined that Kelly wrote, we are of opinion, that the Bishop has in his defence very clearly and fully proved, that he did not, nor possibly could, dictate those letters, or the substance of any part of them, to Kelly, either on the day of their date, or at any time during several days next before or next after the day of their date, nor was in any capacity to write them himself, though the letters must have been wrote within that compass of time; and we are, on the whole, of opinion, that the proof and probability of the Lord Bishop of Rochester's innocence, in the matters he stood charged with, were much stronger than those of guilt.

Thomas Wentworth, Earl of Strafford.  
Nicholas Leke, Earl of Scarsdale.  
William Feilding, Earl of Denbigh.

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Charles Bruce, Lord Bruce of Whorlton.  
 James Cecil, Earl of Salisbury.  
 George Compton, Earl of Northampton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 John Poulett, Earl Poulett.  
 Francis Gastrell, Bishop of Chester.  
 William Legge, Earl of Dartmouth.  
 George Brudenell, Earl of Cardigan.  
 George Henry Lee, Earl of Lichfield.  
 Arthur Annesley, Earl of Anglesey.  
 William Craven, Lord Craven.  
 Heneage Finch, Earl of Aylesford.  
 Thomas Foley, Lord Foley.  
 George Henry Hay, Lord Hay (Earl of Kinnoul).  
 John Ashburnham, Lord Ashburnham.  
 Thomas Trevor, Lord Trevor.  
 Peregrine Hyde Osborne, Lord Osborne.  
 Allen Bathurst, Lord Bathurst.  
 Henry Paget, Earl of Uxbridge.  
 Charles Butler, Lord Weston (Earl of Arran).  
 John Leveson Gower, Lord Gower.  
 James Compton, Lord Compton.  
 Samuel Masham, Lord Masham.  
 John Arundell, Lord Arundell of Trerice.  
 Brownlow Cecil, Earl of Exeter.  
 Francis North, Lord Guilford.  
 William Berkeley, Lord Berkeley of Stratton.  
 George Verney, Lord Willoughby de Broke.  
 Thomas Willoughby, Lord Middleton.  
 Thomas Fermor, Earl of Pomfret.  
 William Cowper, Earl Cowper.  
 Price Devereux, Viscount Hereford.  
 William Greville, Lord Brooke.  
 William Stawell, Lord Stawell.  
 Robert Benson, Lord Bingley.  
 Robert Harley, Earl of Oxford and Mortimer.

I dissent for the sixth and seventh reasons of the foregoing protestation, and for the following reasons:

1st, Because this extraordinary method of proceeding by Bills of this nature against persons who do not withdraw from justice, but are willing to undergo a legal trial, ought, in my opinion, to be supported by clear and convincing evidence; and, I apprehend, there has been nothing offered to support the allegations set forth in the preamble of the Bill to inflict pains and penalties on Francis, Lord Bishop of Rochester, but what depends on deciphered letters, forced constructions, and improbable inuendoes.

2ndly, I conceive, that the examination of Philip Neynoe, taken before the Lords of the Council, not sworn to, nor signed, which appears to me to be the foundation on which the charge against the Bishop of Rochester is built, has been, in my apprehension, sufficiently proved, by the positive oaths of three persons, two of which have been for several months in separate custodies, confirmed by other circumstances, to have been a false and malicious contrivance of the said Neynoe, to save himself from the hands of justice, and to work the destruction of the Bishop of Rochester.

3rdly, I do not apprehend, that the letters of the 20th of April, which are suggested to be wrote by George Kelly, alias Johnson, and dictated by the Bishop, have been sufficiently proved to be the hand-writing of the said Kelly; but, on the contrary, it appears, to the best of my judgment, that the letter of the 20th of August (stopped at the Post-office, and from which the clerks of the Post-office, on their memory only, swear they believe the said letters of the 20th of April to be the same hand-writing, though they never compared two original letters together during all that time) has been proved by three credible witnesses, concurring in every circumstance of their testimony, and well acquainted with the hand-writing of the said Kelly, not to be his hand-writing; and, I conceive, that the difference they observed in the hand of the said Kelly, upon which they ground their opinions, is sufficiently supported, by comparing the said letter of the 20th of August with the letters wrote by the said Kelly to the Lord Townshend and Mr. Delafaye during the time of his confinement.

4thly, I do not apprehend, that any proof has been offered to support what has been so much insisted on, and justly esteemed essential to the charge, that the Bishop of Rochester dictated the letters of the 20th of April; but it has appeared, I conceive, that there has been no intimacy between the Bishop and the said Kelly; and the testimony of the Bishop's servants concurring with the evidence given on that head by the persons that Kelly lived in the strictest correspondence with, leaves, to the best of my judgment, no room to doubt, but that the acquaintance between them was slender and public; and to suggest from thence, that the Bishop dictated the letters of the 20th of April, when it appeared,

that for many days before he could not possibly see the said Kelly, is, in my opinion, repugnant to reason, and contrary to justice.

Philip Wharton, Duke of Wharton.

### CXLV.

MARCH 16, 1724.

The Mutiny Act was read a third time, and passed on this day. It made provision for a force of 16,449 effectives and 1815 invalids, the precise number in the estimate of the year preceding. The debate in the Commons was held on the 22nd of January, 1724. The following protest was inserted, after the Bill had been carried by 77 to 22.

1st, Because the keeping on foot a greater army in time of peace, though by consent of Parliament, than is absolutely necessary for the security of his Majesty's person and Government, is, we conceive, very dangerous to our happy constitution; and we cannot but apprehend, the number of men allowed by this Bill to be much greater than is necessary for that end.

2ndly, Because the conspiracy mentioned in his Majesty's Speech at the opening of the last Session of Parliament, which was the occasion of an addition of about four thousand men, is now at an end; and therefore the cause of raising that additional number being perfectly removed, there does not appear to us the least colour of reason for the continuing of that number.

3rdly, Because, as we conceive, the continuing so great a number of men, this year, will be a precedent of too great weight for continuing the same number of troops in perpetuity; for we cannot, with any probability, foresee or expect that, in any future time, there will be less reason to be given than at present, for justifying the necessity of keeping up so great an army; there being at this time, in our opinion, as little danger to our present happy establishment, to be feared either from insurrections at home, or by any disturbance or invasion from abroad, as the nature and instability of human affairs will well allow of; and we cannot think the fears of remote or imaginary dangers a sufficient argument for so great a present mischief as such an army must bring upon the Kingdom, not only from the great charge and expense of maintaining them, when we are involved in so great a debt, but also from the jealousies which may from thence arise in the minds of many of his Majesty's good

subjects, of their liberties thereby being endangered ; and we cannot but be apprehensive, that if so numerous an army be agreed to in Parliament for some time longer, no argument can hereafter be urged for reducing the number in any future reign, but what will seem to carry with it too great a distrust of the Prince then in possession of the throne ; and will be thought to imply, that the same trust and confidence is not to be reposed in him as in his predecessors ; and this may discourage some persons hereafter from giving their advice to the Crown, upon this most important subject, with that perfect freedom, which ought ever to maintain and exert itself in the debates and resolutions of this great council.

Sir William Dawes, Archbiishop of York.  
 Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Trevor, Lord Trevor.  
 Francis Gastrell, Bishop of Chester.  
 Thomas Foley, Lord Foley.  
 George Henry Lee, Earl of Lichfield.  
 John Leveson Gower, Lord Gower.  
 James Compton, Lord Compton.  
 William North, Lord North and Grey.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Allen Bathurst, Lord Bathurst.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Charles Butler, Lord Weston (Earl of Arran).  
 Henry Paget, Earl of Uxbridge.  
 Heneage Finch, Earl of Aylesford.  
 Philip Wharton, Duke of Wharton.  
 John Hervey, Earl of Bristol.  
 Francis North, Lord Guilford.  
 Robert Benson, Lord Bingley.

## CCXLVI.

MARCH 18, 1725.

The number of soldiers provided for by the Mutiny Act of this year was precisely the same as in the year before. The debate on the estimates was taken in the House of Commons on the 23rd of November, 1724.

The following protest was inserted.

For the reasons entered in the Journals the 24th of February, 1717, the 21st of December, 1721, the 16th of February, 1722, and the 16th of March, 1723 ; which, we conceive, are much stronger against continuing the present number of forces, when peace abroad,

and tranquillity at home, are avowedly established on as solid and lasting a foundation as the nature of human affairs will admit.

Thomas Wentworth, Earl of Strafford.  
Nicholas Leke, Earl of Scarsdale.  
Francis Gastrell, Bishop of Chester.  
Robert Benson, Lord Bingley.  
Philip Wharton, Duke of Wharton.  
George Henry Lee, Earl of Lichfield.  
John Ashburnham, Lord Ashburnham.  
James Compton, Lord Compton.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Allen Bathurst, Lord Bathurst.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Thomas Foley, Lord Foley.

## CCXLVII.

APRIL 13, 1725.

A Bill for regulating elections within the City of London, and for preserving the peace, good order, and government of the said City (11 George I, chapter 18) was read a third time on this day and passed. The preamble of the Act states that great controversies and discussions have arisen in the City of London at the elections of citizens to serve in Parliament, and of mayors, aldermen, sheriffs, and other officers; and that similar disturbances and irregularities have occurred at the passing of bye-laws. It provides therefore that the freemen should make oath, that scrutineers should be appointed, gives power to freemen after the 1st of June, 1725 to dispose of their personal estate as they think fit, and alters the oath of a freeman on admission. The aldermen and livery-men had petitioned against parts of the Bill, and had been heard by counsel on the 1st of April and the 5th of April respectively. The object of the Act was to restrain the Common Council. The negative given to the aldermen in the Act is said not to have been used.—See Stanhope, chapter 13. A proposal was made that the judges should be asked their opinion, whether the Bill repeals any of the prescriptions, privileges, customs, and liberties of the City of London restored to them or preserved to them in 2 William and Mary, for reversing the judgment in a *quo warranto* against the City of London, and for restoring the City to its ancient rights and privileges. This motion was rejected by 83 to 24, and the following protest was thereupon inserted.

1st, Because it being enacted and declared by the Act mentioned in the question, ‘That the mayor, commonalty, and citizens of London, shall for ever hereafter remain, continue, and be, and be prescribed to be, a body-corporate, *in re, facto, et nomine*, by the name of mayor, and commonalty, and citizens of the City of London,

and shall (as by law they ought) peaceably enjoy all and every their rights, gifts, charters, grants, liberties, privileges, franchises, customs, usages, constitutions, prescriptions, immunities, markets, duties, tolls, lands, tenements, estates, and hereditaments whatsoever, which they had (or had a right, title or interest in or to) at the time of giving the said judgment; and we being apprehensive, that the alterations made by this Bill in the constitution of the common council, and other ancient rights, franchises, and prescriptions of the City, may utterly abolish the ancient legal title of the City to their rights, franchises, prescriptions, and constitutions in the particulars contained in the said Bill; and may, in consequence thereof, work a total change of the whole ancient constitution of the corporation of the said City, or greatly confound or prejudice the same, which has stood for so many ages upon the foundation of its ancient title, right, and prescriptions, confirmed by many grants made by his Majesty's royal progenitors, and by many Acts of Parliament; all which were restored so soon after the happy and glorious Revolution, and which have been peaceably enjoyed to the present time: we are of opinion, that the solution of the said question, by the judges, must have tended greatly to the necessary information of the House, and to their better judgment, upon a Bill of so great importance, as well as to the satisfaction and quiet of the citizens of London, who, so far as we can recollect from the petitions against the Bill, are greatly alarmed at the consequence thereof; and we are of opinion, that it was the more necessary, and the more consistent with the wisdom of this House, to be informed of the law, by the judges, upon the question proposed, because we do not find in this Bill any saving or confirmation of any of the ancient titles, rights, prescriptions, privileges, or franchises of the said City, restored to them by the former law.

2ndly, We think the question ought to have been proposed to the judges, the rather because the opinions of several counsel were admitted to be read, at the Bar of the Committee of the whole House, in favour of the said Bill.

Allen Bathurst, Lord Bathurst.  
Thomas Wentworth, Earl of Strafford.  
John Leveson Gower, Lord Gower.  
Nicholas Lechmere, Lord Lechmere.  
John Hervey, Earl of Bristol.  
George Henry Lee, Earl of Lichfield.

Philip Wharton, Duke of Wharton.  
William Coventry, Earl of Coventry.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Montague Bertie, Earl of Abingdon.  
John Arundell, Lord Arundell of Trerice.  
Robert Benson, Lord Bingley.  
Charles Bruce, Lord Bruce of Whorlton.  
Thomas Foley, Lord Foley.  
John St. John, Lord St. John of Bletsoe.  
Francis Gastrell, Bishop of Chester.

## CCXLVIII, CCXLIX.

APRIL 13, 1725.

The third reading of the City of London Elections Bill was carried by  
79 to 27.

It was followed by the subjoined protests.

1st, Because we apprehend, that the penalty of two hundred pounds upon the officer presiding at Wardmote elections, as well as at elections even for Members of Parliament, is so small, that it may be construed into an indemnification, and be looked upon rather as an encouragement than a restraint by a wealthy, partial, and arbitrary officer; at least, we are of opinion, that such a one will not be sufficiently deterred by it from returning such candidates as he likes, rather than such as the City chooses; and if ever that melancholy case should happen, we fear neither the candidates nor voters will be able to find an effectual method of doing justice for so flagrant an injury, either to themselves, or to the nation.

2ndly, Because we cannot but think, from the evidence given at the Bar, that this Bill will take away from many citizens their right of voting in Wardmote elections, by giving an exclusion to all that inhabit houses under ten pounds a year, even though they pay all parish duties, or thirty shillings in lieu of them; which we conceive an unjustifiable hardship upon those who may have long enjoyed that right, and have had no crime objected to them, much less proved, as we think it ought to be, before they can justly be deprived of it.

3rdly, Because, by this Bill, no Act is to pass in common council for the future (except what relates to the nomination of some few officers), without the assent of the major part of the mayor and aldermen present in such common council; which, we conceive,

will give too great an addition of power to the mayor and aldermen, who have already many and large prerogatives uncontestedly allowed them by the commonalty of the City; and though the council for the Bill insisted that the mayor and aldermen had anciently that right which this Bill establishes, yet the proof of that right appeared to us so remote and obscure, that we own ourselves too short-sighted to discern it; and on the other side it appeared plain to us, that even from the time of incorporating the City to this present time, such a claim has very seldom been made, and that it has never been acknowledged; and therefore, we conceive, if there be any foundation for such a right (which we are far from thinking there is), the dispute should be decided first in the inferior courts of justice, and rather determined in the House of Lords upon an appeal, than ended by an Act of Parliament; which seems to us such a method of determining controversies of this nature, as may prove of the most dangerous consequence to the rights and properties of all the subjects of Great Britain.

4thly, Because this Bill abolishes the custom relating to the distribution of the personal estates of free citizens, which is a custom not only of great antiquity, but seems to us to be wisely calculated for the benefit of a trading city, and has been acquiesced under for so many years, without the least complaint of any one free citizen that we ever heard of; that the taking it away in this manner cannot but appear to us too rash and precipitate, and may too probably, in our opinion, be very detrimental to the true interest of this ancient, populous, loyal, and hitherto flourishing city, the preservation of whose good order and government the Bill itself very justly and judiciously allows to be of the greatest consequence to the whole Kingdom.

Nicholas Leke, Earl of Scarsdale.  
Charles Bruce, Lord Bruce of Whorlton.  
Philip Wharton, Duke of Wharton.  
Brownlow Cecil, Earl of Exeter.  
William Craven, Lord Craven.  
John Hervey, Earl of Bristol.  
Thomas Wentworth, Earl of Strafford.  
Francis Gastrell, Bishop of Chester.  
Charles Butler, Lord Weston (Earl of Arran).  
John Arundell, Lord Arundell of Trerice.  
John St. John, Lord St. John of Bletsoe.  
Charles Boyle, Lord Boyle (Earl of Orrery).

Allen Bathurst, Lord Bathurst.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Montague Bertie, Earl of Abingdon.  
George Henry Lee, Earl of Lichfield.  
Robert Benson, Lord Bingley.  
John Leveson Gower, Lord Gower.  
James Compton, Lord Compton.  
Thomas Foley, Lord Foley.  
Henry Paget, Earl of Uxbridge.  
William Berkeley, Lord Berkeley of Stratton.

For the foregoing reasons, and these that follow, viz.

1st, Because we are of opinion, that the several great alterations made by this Bill in the ancient constitution of the common council, and other the rights, franchises, and prescriptions of the City of London, will, if passed into a law, entirely subvert and destroy the ancient title which the City at this time lawfully claims, and has, thereto; and will introduce and enact a new constitution upon the City hereafter to be claimed and enjoyed, not upon the foundation of their ancient title, but of this Act of Parliament; which must, as we conceive, in all future times, whenever the City of London may have occasion to assert or defend their ancient title and franchises, bring them under insuperable difficulties, and may be followed with dangerous consequences concerning the very being and constitution of the corporation, many of which it is impossible to foresee or enumerate.

2ndly, We are of opinion, that the new constitution of the common council enacted by this Bill, whereby a negative is declared and given to the Mayor and Aldermen, not only in the making of bye-laws for the government of the City, but in other Acts concerning the issuing and disposal of the treasure of the City, and also of the Seal of the City, whereby their lands and other estates are subjected to the said negative, and in all other Acts and powers at this time, as we conceive, belonging to the common council, excepting only the appointment of some few officers mentioned in the Bill, is a dangerous innovation upon the City, unsupported by any evidence offered at the bar, of the ancient constitution, and though in late times mentioned to be claimed, yet contrary, as we conceive, to a clear uninterrupted and convincing proof of the exercise of the powers and authorities of the common council in all ages, to the 29th of January, 1723; and we conceive the alteration made by

the Bill in this respect to be the more unwarrantable, because the written evidence offered to support the claim of a negative by the Mayor and Aldermen was either conceived in general terms unapplicable to that claim, and not maintained by subsequent practice, or was drawn from proceedings in times of trouble and confusion.

3rdly, We are of opinion, that the extraordinary power, given by this Bill to the Mayor and Aldermen, will vest in them new exorbitant authorities over all the citizens, their rights, liberties, and franchises of all kinds, inconsistent with that balance of power in the City, by which the same have been preserved; and in the future exercise thereof must, as we conceive, lay the foundation of constant and lasting disputes, divisions, and distractions, in the City of London.

4thly, We think this Bill is the more dangerous, because it creates a new constitution in several particulars contained in it, not framed upon the ancient rights proved or pretended to, or disputed on either side, but is a new model without due regard to the antecedent rights as claimed by either side, and will deprive a great number of citizens of their ancient rights and franchises in elections and otherwise, without leaving them any opportunity of asserting the same by due course of law, and is a precedent of the most dangerous consequence to all the cities and corporations of this Kingdom.

5thly, We are of opinion, that the abolition of the ancient custom of the City touching the personal estates of freemen is a dangerous innovation tending to let into the government of the City persons unexperienced and unpractised in the laudable and beneficial trade of the City and Kingdom, and unfit for the magistracy of the City, and may thereby introduce improper and pernicious influences over the citizens; and we think that the strength, riches, power, and safety of the City of London have been hitherto, in a great measure, supported by this and other customs of the City, as the walls thereof; and we fear, that the decay of trade, and with that, of the grandeur of the City of London, and the diminution and loss of the great excises and duties arising from the trade of the City, on which the support of his Majesty's Government so much depends, may be the consequence of the abolition of this ancient custom and privilege of the freemen of the City of London.

6thly, Because we are of opinion, that the petition of the many thousand freemen of the City against this Bill ought to be a far greater weight against this Bill, than the petition of fifteen aldermen for it; and that the confusion which may arise from this Bill, if passed into a law, may tend greatly to the future disturbance of his Majesty's wise and gentle government.

Philip Wharton, Duke of Wharton.  
Thomas Wentworth, Earl of Strafford.  
William Coventry, Earl of Coventry.

## CCL.

APRIL 19, 1725.

An Act, 11 George I, chapter 17, capitalised annuities amounting to £25,000 per annum, and charged on the Civil List in the seventh year of the King's reign (1721), with certain debts owing by the King, by the creation of £1,000,000 in Exchequer Bills at  $2d$  per diem interest. The Act empowers the Crown by letters patent, made before the 24th of December, 1725, to create a three-per-cent. stock in lieu of these Bills or a part of them. On the second reading, the 16th of April, a motion was made 'that the proper officer or officers of the Exchequer, Excise, Customs, and Post Office, do lay before this House an account of all moneys which have been issued and paid out of the said offices to any person or persons on account, for the Privy Purse, Secret Service, Pensions, Bounties, or any sum or sums of money to any person or persons whatever, without account, from the 25th of March, 1721, to the 25th of March, 1725.' This motion was negatived, five Lords protesting, and on the third reading, the 19th of April, the following protest was inserted.

Because this Bill is to raise a great sum of money, which will, as we apprehend, become a burthen upon the public, and increase that immense load of debt, which is already above fifty millions, and therefore, in our opinions, requires the utmost application to diminish it, and cannot but give us the most melancholy prospect, whenever, especially in a time of peace and tranquillity, we find any addition is made to it; and since his Majesty's revenue, when first settled, was thought sufficient by the Parliament to answer all the necessary expenses of his Civil Government, and is larger, as we conceive, than that of his predecessors; and since that revenue has once already, and not long ago, received an aid of the like sum, we think we were fully justified in expecting an account of the reasons of contracting so great a debt; and

because that was refused to be laid before us, we are of opinion, we cannot discharge our duty to our country, if we should thus uninformed, and in the dark, give our consent to this Bill, which being the second of this kind within a short compass of time, we apprehend may prove of the more pernicious example.

Thomas Wentworth, Earl of Strafford.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Thomas Foley, Lord Foley.  
Charles Bruce, Lord Bruce of Whorlton.

## CCLI.

APRIL 26, 1725.

Great complaints had been made for some time against the Masters in Chancery. They were appointed by the Lord Chancellor, and they paid sums of money to that functionary for their places. As the suitors' money was lodged in their hands, and they paid no interest on the same, the profits of their office (the business of the court increasing with the wealth of the country), were considerable, and the price paid for admission to their places was enhanced. At the same time it was plain that there was little or no security afforded to the suitors, and it was notorious that there were considerable defalcations in the case of some of these officials. Their complaints were naturally directed against the head of that department of justice in which the above occurred, and Lord Macclesfield, the Chancellor, resigned his office on the 4th of January, 1725, the Great Seal being thereupon put into commission. The immediate cause of the prosecution of the late Chancellor was a petition presented to the House of Commons by the Earl of Oxford and Lord Morpeth, two guardians of a lunatic, Elizabeth, Duchess dowager of Montague, charging Messrs. Hiccocks and Bennet, two Masters in Chancery, with embezzling very large sums belonging to the lunatic's estate. This petition (23rd of January, 1725), came before the House of Commons just as the accounts of the Masters were being examined by the Lords Commissioners of the Great Seal, and a long debate ensued, in which very severe reflections were cast on the late Chancellor. On the motion of Mr. Henry Pelham, the debate was adjourned to the 9th of February, and during the interval accounts and papers were, by the King's command, laid before the House. On the 13th of February, Sir George Oxenden moved that the Earl of Macclesfield be impeached of high crimes and misdemeanours. A committee was appointed to draw up articles, which were reported on the 13th of March, and were ordered to be carried to the Lords on the 20th. Lord Macclesfield presented his answer on the 8th of April, and on the 23rd of April Sir George Oxenden, on behalf of the Commons, stigmatised the Earl's answer as evasive. At this stage of the proceedings it was moved that the trial of the Earl should take place on Thursday, the 7th of May, at the Bar of the House. A motion was then made that the words

'at the Bar of the House' should be left out, with a view to holding the trial in Westminster Hall. This was lost by 59 to 17, and the following protest was inserted.

1st, Because we are of opinion, that it highly concerns the honour and dignity of this House, in all cases of impeachments, that the trial should be had in the most public and solemn manner, that being most suitable to the laws and constitutions of this Kingdom in all cases whatsoever, but is more especially requisite in a prosecution of the Commons of Great Britain begun and carried on by their representatives in Parliament: for which reasons we think, that this trial ought to be had in Westminster Hall, and not at the Bar of the House, where it is impossible, as we conceive, to provide room and other conveniences for the attendance of the House of Commons, and such others of the subjects of this Kingdom who may be desirous to be present at this trial.

2ndly, We are of opinion, that it is a justice due to the Earl who is impeached, to give him the opportunity of vindicating himself, and to assert his innocence in the most public manner imaginable, the crimes wherewith he is charged by this impeachment being of that nature as render it, as we conceive, most desirable, and even necessary, on his part, to give universal satisfaction of his innocence in a case wherein his honour, and that of his posterity, are so highly concerned.

3rdly, We are of opinion, that it is of great moment to the honour and dignity of the Crown, the fountain of justice, that the trial of this impeachment should be had in that place which may be most satisfactory to the whole nation, because the articles, whereby the Earl stands impeached, relate to the administration of the public justice of the Kingdom, and consists of facts and matters charged on him whilst he was Lord High Chancellor, and as such was intrusted by his Majesty with the execution of the most eminent office and station concerning the administration of justice.

4thly, Because we observe that the Earl impeached has, in his defence, by his answer, in some degree involved the honour of many great personages, Peers of this Realm, and others, some living, and others long since deceased, but whose descendants are now Peers and Members of this House, in the consideration of

the matters and crimes charged on himself; which circumstance of the defence being, as it seems to us, in the opinion of the Earl, material to be examined into upon the trial, we are of opinion, that in this respect also, the place of trial is become of more importance and most proper to be in Westminster Hall, and not at the Bar of this House, where the examinations must unavoidably, as we conceive, be less public, and in that respect less satisfactory.

5thly, It appearing to us by several reports delivered to this House by his Majesty's direction, which relate to the administration of the justice of the High Court of Chancery, whilst the said Earl was Lord Chancellor, that there are very great deficiencies of the money and effects belonging to orphans and widows, and others the suitors of the Court; which money and effects were brought into the Court, or into the hands of the Masters in Chancery; and which deficiencies, as they appear to us, amount to a great many thousand pounds, as yet wholly unsatisfied and unsecured; for this reason, we are of opinion, that it is necessary for the public satisfaction, and particularly of the suitors concerned, that his trial should be had, not only in the most solemn manner, but in the most public place also.

6thly, We do not find that any impeachment of the Commons has been tried at the Bar of this House, or in any other place than in Westminster Hall, since the Restoration of King Charles the Second, and before that period the impeachment of the Earl of Strafford was tried in Westminster Hall; we find also that, since the Restoration, every Peer which has been tried by this House, either upon an impeachment or an indictment, has had his trial in Westminster Hall, and not at the Bar of this House; and some time after the late happy Revolution, private persons impeached by the Commons, for frauds and cheats relating to the Lutstring Company, and private traffic, were appointed by this House to be tried in Westminster Hall; the impeachment of Dr. Sacheverell, for misdemeanors committed in the pulpit, was tried there also: for which reasons we are of opinion, that this impeachment being, as we conceive, of the highest consequence to the honour of the Crown and Kingdom, ought to be considered, at least with equal regard as to the place of trial, and in every other respect with any of those trials before mentioned: and the rather, for that the

method of proceedings on trials of impeachments, if had at the Bar of this House, contrary to the general course since the Restoration, are therefore more unsettled by any late precedents, and in that respect may be liable to more difficulties and delays than if had in Westminster Hall.

7thly, We think that no consideration of delay which may be occasioned for a little time by the preparations to be made in Westminster Hall, or any other account during the trial, are an equivalent consideration, or to be balanced with the public satisfaction, which in every respect is, in our opinion, due to this proceeding, and especially with regard to the place of trial.

Philip Wharton, Duke of Wharton.  
 Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 William Coventry, Earl of Coventry.  
 John Leveson Gower, Lord Gower.  
 Charles Boyle, Lord Boyle (Earl of Orrery.)  
 Nicholas Lechmere, Lord Lechmere.  
 Thomas Foley, Lord Foley.

I dissent for all the forementioned reasons, except the fourth.

Thomas Windsor, Lord Montjoy (Viscount Windsor).

## CCLII.

MAY 3, 1725.

A Bill was brought from the House of Commons on the 17th of April, entitled, ‘An Act for more effectual disarming the Highlands in that part of Great Britain called Scotland, and for the better securing the peace and quiet of that part of the Kingdom,’ was read a first time on the 19th of April, a second on the 22nd of April, put into Committee on the 27th, and passed on the 3rd of May. It is 11 George I, cap. 26. A similar Act had been passed in the first year of George’s reign. The Act was worse than inoperative, a few arms were surrendered to General Wade by the disaffected clans, and the well-disposed clans were left defenceless.—Quarterly Review, No. xxviii, p. 322, referred to by Lord Stanhope.

The Act produced the following protest.

1st, Because the Bill sets forth, ‘that many persons in the Highlands commit many robberies and depredations and oppose the due execution of justice against robbers, outlaws, and persons attainted;’ which assertion, we conceive, was meant as an inducement to pass the Bill, and therefore should have been fully made out by proof, or

have been undeniably clear from its notoriety; but no proof was attempted to be made of it; and we have not heard that such outrages, as are charged upon the Highlanders, have been committed by them of late.

2ndly, We apprehend that this Bill gives to Lords Lieutenants of Counties, Justices of the Peace, and others, such large and discretionary powers, in some cases, as are hardly to be trusted in the hands of any persons in a free Government, unless apparently necessary to the preservation of it.

3rdly, Since the behaviour of the Highlanders has been peaceable and inoffensive for some years past, and is so at present, as far as appears to us, we cannot but fear this Bill may prove unseasonable, may hazard the loss of that invaluable blessing which we now enjoy, a perfect calm and tranquillity, and raise amongst these people that spirit of discontent and uneasiness which now seems entirely laid; for we apprehend that the execution of some authorities in this Bill is more likely to create, than to prevent disorders; we think it applies severe remedies where, as far as we can perceive, there is no disease, and this at a time when the Highlanders not being accused of any enormities, for which, in our opinion, the legislature ought in justice to punish them, or in prudence to fear them, we think it would become us, as good patriots, to endeavour rather to keep them quiet, than to make them so.

Philip Wharton, Duke of Wharton.  
 Nicholas Leke, Earl of Scarsdale.  
 George Henry Lee, Earl of Lichfield.  
 John Leveson Gower, Lord Gower.  
 Charles Boyle, Lord Boyle (Earl of Orrery).

### CCLIII.

MAY 22, 1725.

On the 17th of May, a Bill enabling Bolingbroke to enjoy certain lands and hereditaments notwithstanding his attainder, the King having given his assent to this course, was read for the first time. The pardon was laid on the table on the 19th of May. The Bill was read a second time on the 20th of May, and put into Committee on the 22nd. The Bill had been read in the House of Commons for the first time on the 26th of April, a second time on the 30th of April (when certain persons from both parties spoke strongly and voted against it), and was passed on the 5th of May. The circumstances which led to Bolingbroke's partial re-

storation are to be found in Stanhope's History, vol. ii, p. 71. The Bill is a private Act, the fortieth of this year (11 George I). Bolingbroke died in 1751, and his peerage, suspended during his life, passed to his nephew, Viscount St. John.

The following protest was inserted against going into Committee.

1st, Because we apprehend it to be inconsistent with the honour and dignity, which in all cases should be observed in the proceedings of this House, to make a resolution, especially upon debate, to put the House into a Committee on this Bill, at the same instant or moment of time on which, by an order of the 21st instant, it was resolved, that the House would further proceed on the impeachment of the Earl of Macclesfield; and it does not appear to us, that any precedent is to be found on the Journals of this House, to warrant this resolution in that respect.

2ndly, We conceive, that this resolution may draw on a debate or doubt in the House, touching the preference to be given by the House to the further progress on this Bill, or to the further proceeding on the said impeachment; which debate, if any such should happen, we think, may be attended with ill consequences; the matter of the said impeachment, so pressing and necessary, in our opinions, to the public justice of the nation, being compared with this Bill, which contains, as we think, extraordinary and undeserved bounty and reward to a person impeached by the Commons, and as yet attainted for treasons which tended to the overthrow of the Protestant succession to the Crown of these realms, and placing the Pretender on the throne.

William Coventry, Earl of Coventry.  
George Booth, Earl of Warrington.  
Nicholas Lechmere, Lord Lechmere.

#### CCLIV.

MAY 24, 1725.

The Bill restoring Bolingbroke to his estates was read a third time and passed on this day by 75 to 25. The names of the Duke of Wharton, Lords Warrington and Scarsdale, are written on the margin of the following protest. The Duke, who had now almost openly espoused the cause of the Pretender, had done all in his power to induce Shippen and Bolingbroke's other old friends to oppose the Bill in the House of Commons.

1st, Because the purport and intention of this Bill is to repeal

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several Acts of Parliament passed since his Majesty's accession, whereby all the estate and interest of the late Lord Bolingbroke, in the hands mentioned in this Bill, being forfeited to the Crown for high treason, were vested in trustees, and still remain appropriated to the use and benefit of the public; the value of which lands amount, as we believe, to several thousand pounds per annum: we therefore think it unjust to all the subjects of this Kingdom, who have borne many heavy taxes, occasioned, as we believe, in great measure, by the treasons committed, and the rebellion which was encouraged by this person, to take from the public the benefit of his forfeiture.

2ndly, It appears from the Articles of Impeachment exhibited by the Commons against the late Lord Bolingbroke, whereon he now stands attainted by Act of Parliament, that he stood charged with the commission of several treasons of the most flagrant and dangerous nature, committed by him whilst he was Secretary of State to her late Majesty Queen Anne, for traitorously betraying her most secret counsels to the King of France, then at war and in enmity with her Majesty, and with other treasons tending to destroy the balance of Europe, and to raise the then exorbitant power of the French King, who not long before had publicly acknowledged the Pretender to be the lawful and rightful King of these realms.

3rdly, The treasons wherewith he was charged, we conceive, were fully confessed by his flight from the justice of Parliament; but his guilt was afterwards, as we think, indisputably demonstrated by the new treasons he openly and avowedly committed against his present Majesty; it being notorious, and it having been declared to the House on the debate of this Bill, that he did, soon after his flight, enter publicly into the counsels and services of the Pretender, who was then fomenting and carrying on a rebellion within these Kingdoms for the dethroning his Majesty, into which rebellion many of his Majesty's subjects, as well Peers as Commoners, were drawn, as we believe, by the example or influence of the late Lord Bolingbroke, and for which reason many Peers and Commoners have since been attainted, and some of them executed, and their estates, both real and personal, become forfeited by their attainders, and as yet continue under those forfeitures.

4thly, We have not been informed of any particular public

services which this person hath performed to his Majesty, or this nation, since his commission of the many high and dangerous treasons before-mentioned, and, in case he has done any, they must be of such a nature as ought, in our opinions, to be rewarded in another manner than is provided by this Bill, and for which, we think, the Crown is otherwise sufficiently enabled. And the sincerity of his having quitted the interest of the Pretender may, in our opinions, be justly suspected, he never having, as appears to us, throughout the progress of this Bill in both Houses, once signified his sorrow for the treasons he had committed ; and if he had really abandoned that interest, his private intelligences or services, with regard to the interest or counsels of the Pretender, cannot reasonably be supposed, in our opinions, to be of great value.

5thly, We think that no assurances which this person hath given, nor any services he can have performed since his commission of the treasons aforesaid, or any further obligations he can enter into, can be a sufficient security to his Majesty or the Kingdom against his future insincerity, which may happen, he having already so often violated the most solemn assurances and obligations, and, in defiance of them, having openly attempted the dethroning of his Majesty, and the destruction of the liberties of his country.

6thly, We think the services he may have performed, if any, ought not to be rewarded either in the degree or the manner provided by this Bill, it having been found by experience, in cases of like nature, that the strongest assurances have afterwards proved deceitful; for which reason we conceive it to be unwise and dangerous to give such rewards as cannot be recalled, though the assurances should be broken ; and we believe it to be the known policy and universal practice of wise Governments to keep the persons (claiming merit from such services as the late Lord Bolingbroke can possibly have performed since the commissions of his treasons) dependent on the Government for the continuance of those rewards.

7thly, The pardon of the late Lord Bolingbroke, under the Great Seal, having been communicated to the House, and under consideration on the debate of this Bill, we think that this Bill ought not to pass, because it may hereafter be construed, in some degree, to confirm or countenance that pardon : and we are of opinion, that that pardon, though it may be legal as to the treasons committed

by him since his attainder, yet so far as it may be construed (if that should be) to pardon or affect the Act of Attainder of the late Lord Bolingbroke, or the impeachment of the Commons, on which that Act is founded, it is a most dangerous violation of the ancient rights and freedom of the Kingdom, and will defeat the whole use and effect of impeachments by the Commons; which is, as we think, the chief institution, arising even from the Constitution itself, for the preservation of the Government, and for the attaining Parliamentary justice; and tends, as we conceive, to render the rights and judicature of this House, on impeachments and Bills of Attainder, vain and useless; all which ancient rights of both Houses, and of the subjects of this nation, were saved to them by the Revolution, and were intended, as we conceive, to have been for ever preserved to them in their full extent, by the Act passed in the reign of the late King William, of ever glorious memory, by which the Crown of these realms is limited and settled on his present Majesty and his issue, and in which Act it stands declared, 'that no pardon under the Great Seal shall be pleadable to an impeachment of the Commons.'

8thly, We are of opinion, that the power of dispensing mercy is an ancient inherent right of the Crown of these realms, and the exercise of it of great benefit to the people, when it is wisely and properly applied; but it being incumbent on us, in the vote we give for or against passing this Bill, to judge between the late Lord Bolingbroke, and to consider the right and title he appears to us to have to the benefits of this Bill, and the concern which, on the other side, the honour, interest, and safety of the King and his royal family, and the whole Kingdom, have, in our opinion, from the consequences of it, we think we cannot be justified in our own thoughts, with regard to the latter, or to our posterity, if we should consent that this Bill should pass.

William Coventry, Earl of Coventry.  
Hugh Fortescue, Lord Clinton.  
Thomas Onslow, Lord Onslow.  
John Hervey, Earl of Bristol.  
Nicholas Lechmere, Lord Lechmere.

## CCLV, CCLVI.

MAY 26, 1725.

The trial of the Earl of Macclesfield lasted eleven days, between the 6th and 26th of May. The proceedings are given at length in Howell's State Trials, vol. xvi, p. 767. The Earl was unanimously found guilty, ninety-three Peers having given their verdict. On the 27th of May sentence was pronounced by Chief Justice King, afterwards Lord King. He was fined £30,000, and an address was presented to the King, praying him that the fine be devoted to making good the losses of the suitors in Chancery.

On the 26th of May it was proposed that the Earl should be for ever incapable of any office, place, or employment in the State or Commonwealth. The votes on this motion were equal, 42 to 42, and therefore the motion was negatived.

Two protests were inserted.

1st, Because it is certain that the honour and dignity of the Crown, the security of our religious and civil rights, and the preservation of our most excellent constitution in Church and State, entirely depend upon the probity, integrity, and ability of those persons whom his Majesty shall call to his Councils, and who shall be employed in any office, place, or employment in the State or Commonwealth.

2ndly, Because, we conceive, a person impeached by the House of Commons of corruption of the deepest dye, and who, after a full and legal trial, was by this House unanimously found guilty of high crimes and misdemeanors, charged on him by the House of Commons, which high crimes and misdemeanors were committed by him in the execution of his high station as Lord High Chancellor of Great Britain, ought not to be exempted from this part of the sentence, which has always been thought proper to be inflicted by our ancestors, both in regard to the safety of the Government, and the justice of this House, on persons convicted of crimes of the like nature; and we do not find one instance on the Journals of Parliament, where this penalty has been omitted.

3rdly, We apprehend that his Majesty having removed the Earl of Macclesfield from the trust reposed in him by the custody of the Great Seal, and having earnestly recommended to the Lords Commissioners appointed to succeed him, the taking effectual care that entire satisfaction be made to the suitors of the Court, and that such suitors be not exposed to any dangers for the future,

and fully expressed his gracious disposition that the said Lords Commissioners should look narrowly into the behaviour of all the officers under their jurisdiction, and should see that such officers act with the strictest regard to justice, and to the ease of his subjects (which is a plain indication of his Majesty's just resentment of the Earl's ill conduct during his presiding in the Court of Chancery), and having, in great tenderness to the injured nation, recommended the protection of the unhappy sufferers to the justice of Parliament, we thought it incumbent upon us, on this great occasion, when the Commons have so clearly made out their charge against the impeached Earl, not to depart from the methods of our ancestors in the framing of our sentence with an unusual tenderness to a person against whom the whole nation cries for justice, but to pursue their glorious steps upon the like occasions, and to incapacitate the said Earl from having any office, place, or employment in the State or Commonwealth, as the most effectual means to deter others from being guilty of the like crimes for the future.

Thomas Fermor, Earl of Pomfret.  
William Feilding, Earl of Denbigh.  
Philip Wharton, Duke of Wharton.  
Thomas Wentworth, Earl of Strafford.  
James Compton, Lord Compton.  
Charles Bruce, Lord Bruce of Whorlton.  
Montague Bertie, Earl of Abingdon.

We do dissent to the before-mentioned question for the reasons following:

1st, This House having resolved, that the House of Commons have made good their charge of high crimes and misdemeanors against the Earl impeached, and by a subsequent resolution having unanimously declared him guilty, we are of opinion, that it is a necessary consequence in law, justice, honour, and conscience, that the disabilities contained in the question proposed should be a part of his punishment, they being such as, we think, the wholesome laws and statutes, against which the Earl has offended, do expressly ordain for the punishment of his crimes, and such as the nature, circumstances, and consequences of his guilt do, in our opinions, most justly deserve.

2ndly, The Articles of the House of Commons, whereof the Earl is, in our opinions, declared guilty, are an accusation of him for

many repeated acts of bribery, extortion, perjury, and oppression, committed by colour of his office of Lord High Chancellor, and of many endeavours to have concealed and suppressed the discovery of them, even from the knowledge of his Majesty; those crimes therefore being by the laws of this land, and, as we believe, by the laws of all civilized nations in the world, adjudged to be crimes of an infamous nature, we think the incapacity proposed by this question to be one natural and unavoidable step to have been made by this House in the judgment on those crimes.

3rdly, The Earl, in his answer to the Articles of the Commons, hath asserted, that the taking the many sums by him from the masters in Chancery (which sums he there calls presents) was never before looked upon to be criminal; and hopes that the giving or receiving such a present is not criminal in itself, or by the common law of this Realm, and that there is not any Act of Parliament whatsoever by which the same is made criminal, or subject to any punishment or judgment, which can be prayed in this prosecution: the Earl himself, and his council on his behalf, upon his trial, attempted to justify his extortions (then called compliments) and endeavoured to maintain, that they are conformable to the laws of the land; but we cannot reflect on this behaviour of the Earl otherwise than as the highest dishonour thrown by him upon the laws and Government of this Kingdom, and a most daring and groundless endeavour to disparage the common law of the land, Magna Charta itself, the clear and express injunctions of many statutes, particularly those passed in the reigns of Richard II, Henry IV, and Edward VI, in his behalf, and of an Act passed this Session of Parliament for the indemnification of the masters in Chancery; against the plain sense of all which laws the Earl has, in our opinions, knowingly and wilfully offended; and as this unparalleled justification attempted by the Earl will be transmitted to all posterity, we think it absolutely necessary that the punishment proposed by this question should have been inflicted, in vindication of the laws and Government itself, against the aspersion the Earl has thrown upon both, and to prevent any imputation which may hereafter be cast on the honour and justice of this House, as having, on this occasion, in any degree seemed to favour or countenance such defence.

4thly, The Earl has in his answer asserted some of his practices

to have been long used by his predecessors, and by others being Chief Justices, Masters of the Rolls, and other Judges; and on his trial offered evidence to prove his assertion in four instances only, three of them in the time of one, and the other in the time of his immediate predecessor; but though those instances, as we think, were unattended with the many aggravations of the Earl's guilt in those respects, yet lest those examples, together with that of the Earl, should hereafter be construed a mitigation of his, or an encouragement to the like offence, we think the punishment now proposed ought to have been inflicted, by which it would become the more exemplary; and the rather, because it appears to us highly probable, that the imputation as it is thrown by the Earl upon his predecessors, is unjust; the memory of many of those wise and excellent persons never having been, as we believe, stained with an imputation, till the Earl cast it on them; and some of his predecessors having, in several ages, fallen under the severe and strict inquisition of Parliament for bribery and corruption, without any charge upon them for that criminal practice.

5thly, We are of opinion, that this House, now exercising its judicature as the supreme Court in this Kingdom, upon an accusation of the Commons for offences against the known laws of the land, has no legal power or authority to dispense with or omit those punishments which are expressly ordained by positive Acts of Parliament; and it appears to us to be indisputable, that the disabilities proposed by this question are expressly ordained by the statute made 11 Henry IV, and in some degree by the statute 5 and 6 Edward VI, against buying and selling offices, for the very same offences of which this House hath, as we conceive, declared (and of which we are fully satisfied in our consciences) the Earl is guilty; and the punishment proposed in this question hath been inflicted by the House in the cases of the Lord Bacon and Earl of Middlesex, for corruptions, in our opinions, much less heinous than the crimes of the Earl impeached; and the judgments given by this House on those two persons were founded, as we think, not only upon the nature of the crimes, but were directed and prescribed by the Acts of Parliament above-mentioned, and still remain on the records of this House unimpeached, and their authority never judicially questioned, to our knowledge, but are often referred to and approved by the most learned authors and

judges of the laws of this land ; we are therefore of opinion, that it was not only wise, but even that the law requires, that the judgment upon the Earl impeached should be consonant in this respect to the judgment of this House, in those two instances ; whereby the law of the land in this particular stands declared, as we think, by the authority of the supreme judicature of the Kingdom, and which no power less than the authority of an Act of Parliament, in our opinion, can abrogate.

6thly, It having appeared, on the trial of the impeached Lord, that the most dangerous and destructive corruptions have been committed by him, whilst in the highest station, in the administration of public justice, to the great dishonour of the Crown, and the detriment of great numbers of the King's subjects, and in one instance, whilst he (with others) was in the exercise of the regal authority ; we think it of the highest consequence to the honour and support of his Majesty's Government, and the satisfaction of the whole Kingdom, that the Earl should, by the judgment of this House, have been incapacitated from ever having the power or opportunity of re-acting the like corruptions, against which, as we conceive, there could be no security, but by inflicting upon him the disabilities proposed in this question.

Nicholas Leke, Earl of Scarsdale.  
George Compton, Earl of Northampton.  
John Campbell, Duke of Greenwich (Duke of Argyll).  
Thomas Wentworth, Earl of Strafford.  
William Feilding, Earl of Denbigh.  
John Ashburnham, Lord Ashburnham.  
David Erskine, Earl of Buchan.  
Philip Wharton, Duke of Wharton.  
George Montagu, Earl of Halifax.  
Montague Bertie, Earl of Abingdon.  
Charles Howard, Earl of Carlisle.  
Bennet Sherard, Earl of Harborough.  
George Henry Lee, Earl of Lichfield.  
John Hervey, Earl of Bristol.  
John Leveson Gower, Lord Gower.  
Allen Bathurst, Lord Bathurst.  
William Greville, Lord Brooke.  
Nicholas Lechmere, Lord Lechmere.  
Charles Bruce, Lord Bruce of Whorlton.  
Talbot Yelverton, Earl of Sussex.  
George Henry Hay, Lord Hay (Earl of Kinnoull).  
William Montagu, Duke of Manchester.

Charles Douglas, Earl of Selkirk.  
Samuel Masham, Lord Masham.  
George Hamilton, Earl of Orkney.

## CCLVII, CCLVIII.

MAY 26, 1725.

It was next moved, 'That the said Earl shall never sit in Parliament, nor come within the verge of the Court.' This motion was rejected by 45 to 39.

The following two protests were inserted.

1st, We cannot agree to this resolution, for the reasons given in the last Protest; and further, we conceive, that there was the greater necessity for the punishment proposed in this, from the determination of the House on the former question, from whence (and also from the question having passed in the negative) there remains, as we apprehend, no punishment, but a pecuniary one, to be inflicted on the impeached Earl for his heinous and unexampled misdemeanors; which punishment we think (and we fear the whole nation will judge) to be utterly inadequate to his transgressions, and not consistent with the resolutions already passed by this House upon the Earl, whereby he is rendered in judgment of law, as we think, an infamous person, and not capable of bearing testimony as a witness, much less fit to sit in this supreme Court as a judge, perhaps on points of the highest moment to the Kingdom, and over the lives, liberties, and properties of the subjects, many of which he has, in our opinions, already so notoriously injured.

2ndly, Because we find, that the punishment now proposed has been inflicted in the two instances of Lord Bacon and the Earl of Middlesex; and the like in earlier instances, particularly in the case of Hubert de Burgo, created Earl of Kent, who was afterwards charged in Parliament for counselling the King to cancel Magna Charta, and for other offences, and was degraded from his dignity by the judgment of his Peers; and we conceive, that the condemnation which this House has already passed on this Earl is founded upon the most aggravated guilt which has ever appeared in any criminal, whose offences were not capital; amongst which his repeated wholesales (as we conceive them to be) of the justice of the Court of Chancery, in the corrupt dispositions of the offices of the Masters, were, as far as in him lay, so many barters and

sales of Magna Charta itself, by which the sale of justice is prohibited.

3rdly, We conceive it to be utterly inconsistent with the honour and dignity of this House, to let a Lord condemned, as we think, for the most dangerous corruptions committed by him whilst he was a Judge, to continue afterwards in the enjoyment of his seat in this House, under no other censure than of a fine, and imprisonment till that is paid ; because, we fear, it may hereafter give too much encouragement to the worst corruptions in the greatest officers of the State, if, from the example of this Earl, it should be hoped their crimes may be ransomed by a small part, perhaps, of their corrupt and extorsive gains ; by which means the greatest offenders of this sort may think their impunity the more secure, by so much the higher that they carry, and the more they succeed in their corrupt practices : we think also, that the sum of thirty thousand pounds, if that should be the fine, does very little, if at all, exceed the gross sum this Earl has received (as we believe, in bounties from his Majesty, over and above the due profits of his offices), and the other great sums he has extorted and still retains ; we are therefore of opinion, that the infamy, which, we think, is due to the crimes of which the Earl is condemned, should have been fixed upon him by the disability proposed in this question.

George Compton, Earl of Northampton.  
Nicholas Leke, Earl of Scarsdale.  
William Feilding, Earl of Denbigh.  
John Campbell, Duke of Greenwich (Duke of Argyll).  
Philip Wharton, Duke of Wharton.  
George Montagu, Earl of Halifax.  
Thomas Wentworth, Earl of Strafford.  
John Ashburnham, Lord Ashburnham.  
Charles Douglas, Earl of Selkirk.  
William Montagu, Duke of Manchester.  
Montague Bertie, Earl of Abingdon.  
George Henry Lee, Earl of Lichfield.  
Charles Howard, Earl of Carlisle.  
Allen Bathurst, Lord Bathurst.  
John Leveson Gower, Lord Gower.  
John Hervey, Earl of Bristol.  
Nicholas Lechmere, Lord Lechmere.  
William Greville, Lord Brooke.  
Bennet Sherard, Earl of Harborough.  
Samuel Masham, Lord Masham.

George Henry Hay, Lord Hay (Earl of Kinnoull).  
 Charles Bruce, Lord Bruce of Whorlton.  
 David Erskine, Earl of Buchan.  
 George Hamilton, Earl of Orkney.

We dissent to the last-mentioned question for the reasons following:

1st, For the first reasons given on the foregoing question, which, we apprehend, hold the stronger against his being permitted to sit in the highest court of judicature, since it may expose the judgment of that House to censure, when a person guilty of such corrupt practices shall be one of the judges.

2ndly, We apprehend, that a person whom his Majesty has, in such a manner, removed from being a judge of his subjects' properties, cannot be thought fit to sit in this House, in such case as may affect the lives of every Peer of this House, and the property of all the subjects of Great Britain.

James Compton, Lord Compton.  
 Philip Wharton, Duke of Wharton.  
 Thomas Fermor, Earl of Pomfret.  
 Montague Bertie, Earl of Abingdon.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Wentworth, Earl of Strafford.

### CCLIX.

FEBRUARY 17, 1726.

On the 3rd of September, 1725, a defensive treaty of alliance (the treaty of Hanover) was concluded between the Kings of Great Britain, France, and Prussia. (Almon's Treaties vol. i, p. 376.) These treaties were laid before the two Houses on the 10th of February, and a debate was taken on them in the Commons on the 16th. In this House an address to the King was moved by Henry Pelham, and carried by 285 to 107. The Lords took the treaties into consideration on the 17th, where an identical address was moved by Lord Townshend, and was seconded by the Duke of Ancaster. Lord Lechmere, however, proposed the clause following, 'This House not doubting but your Majesty, in your great wisdom and justice to these your Kingdoms, will always preserve to them the full and entire benefit of the provision made for further securing our religion, laws, and liberties, by an Act passed in the twelfth and thirteenth years of the reign of his late Majesty King William III, of glorious memory; whereby it is enacted, "That in case the Crown and imperial dignity of this realm shall hereafter come to any person not being a native of this Kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions

or territories which do not belong to the Crown of England, without the consent of Parliament." But the motion was lost by 94 to 15. On this treaty, and the use made of it by the Opposition during Walpole's administration, see Stanhope's History, chap. 13.

The following protest was entered.

1st, The clause of the Act of Parliament referred to in the words proposed to be added, being passed into a law upon the solemn occasion of settling the Crown of these realms upon his Majesty and his royal issue, and the same provision, and others, in that Act made, having been since re-enacted by Parliament upon another very solemn occasion, we are of opinion, that it is hereby become a fundamental and a very sacred part of the constitution of the United Kingdom, upon the strict and unviolable observance of which the future tranquillity of this nation, and the properties of the subjects of Great Britain, may, in our opinions, greatly depend; and therefore we thought the words proposed fit to be added to a resolution of this House, wherein the defence of his Majesty's dominions and territories, not belonging to the Crown of these realms, is, as we conceive, in some measure engaged for.

2ndly, We are of opinion, that the unfeigned zeal constantly shewn by this House in defence of his Majesty's sacred person, and the honour and true interest of his Government, can never fail to exert itself in vindication of his Majesty's honour against all insults and indignities whatsoever; and though we are far from thinking but that a case may arise, wherein the consent of this House to engage this nation in a war in defence of his Majesty's dominions in Germany may be both just and necessary, yet it being, in our judgment, reserved to both Houses of Parliament, by the laws above mentioned, to deliberate and advise upon all the circumstances, and thereupon to consent to the justice of the cause whereby this nation shall at any time be engaged in a war upon that account, we are therefore convinced, that the words proposed ought to have been added to the resolution.

3rdly, And the rather, because the words proposed to be added import the most dutiful and entire confidence in his Majesty's wisdom and justice to these Kingdoms in that respect; and therefore, if they had been added to the resolution of this House at this critical juncture, would, as we conceived, have prevented any

jealousies which might happen to arise in the minds of the subjects of this realm, in a matter which we think to be of such high importance to them.

Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 John Hervey, Earl of Bristol.  
 William Gordon, Earl of Aberdeen.  
 James Compton, Lord Compton.  
 George Henry Lee, Earl of Lichfield.  
 Nicholas Lechmere, Lord Lechmere.  
 William Craven, Lord Craven.

## CCLX.

APRIL 20, 1726.

On the 24th of March 1726, the King sent a message to the House of Commons, informing them that dangers have been formed against the peace of Europe, and the interests of the nation, and thereupon requested them to grant such sums as would enable him to increase the maritime forces. The Earl of Strafford complained of this message as an affront to the Upper House, and moved that an address be presented to the King, to know who advised his Majesty not to send the same message to the House of Peers, as was sent to the House of Commons. This was met by a motion of Lord Trevor that the further consideration of the matter be adjourned for a month, which motion was carried by 59 to 31. On that day, the 18th of May, a motion was made in the terms of Lord Strafford's proposal, but was rejected, two Peers, Lords Lechmere and Montjoy protesting.

On this occasion the following protest was inserted.

1st, Because, we conceive, the subject-matter of this debate to be of so great consequence to his Majesty's service, to the honour of this House, to the constitution of Parliament, and to the prosperity of the Kingdom, that it ought not to have been postponed at all, much less for such a length of time. It must be for the service and support of the Crown to have the advice of both Houses of Parliament upon all occasions; and as the message taken notice of was only sent to the House of Commons, there has hitherto been no communication with this House thereupon, though it contains matters of the highest importance; and we conceive, that it tends to undermine the very foundation of this House, when the Lower House is alone advised with upon any matter which concerns the interest of the whole Kingdom.

2ndly, As this House has always been esteemed the hereditary

and perpetual guardians of the liberties and properties of the people, they ought not to be excluded from giving their advice in all matters of public concern; and the rights of the people of England are, as we apprehend, invaded, whenever they are deprived of the assistance of this House of Parliament, without whom no aids can be given to the Crown, nor no taxes imposed on the people; therefore, as we conceive, this message (being sent to the House of Commons only), tends to subvert those rights: we think this debate should not have been adjourned, lest any inference should be drawn from this dilatory proceeding, that this House is not as jealous of their rights and privileges at this time, and as much determined to support them, as any of their ancestors have formerly been.

3rdly, Since it cannot be doubted, that it is an inherent and fundamental right in this House to alter and amend all money-bills which come from the Commons, we cannot but apprehend also, that demands of supply should come from the Throne in the House of Parliament, according to ancient usage; and, we conceive, all other methods of demanding supplies are new, and must be dangerous to the constitution.

4thly, Because there is an expression in the message which we apprehend to be entirely unprecedented, and never before used in any message to the House of Commons, the appellation of 'Parliament' being given to them separately from this House; and therefore, lest any mistake of this kind should be attended with such ill consequences as to encourage evil ministers hereafter to a total neglect of this House, we conceive, the proper notice should have been taken of it immediately, without deferring the further consideration thereof for a month.

Nicholas Leke, Earl of Scarsdale.  
William Gordon, Earl of Aberdeen.  
George Booth, Earl of Warrington.  
Thomas Wentworth, Earl of Strafford.  
William Coventry, Earl of Coventry.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
William Craven, Lord Craven.  
James Compton, Lord Compton.  
Allen Bathurst, Lord Bathurst.  
George Henry Lee, Earl of Lichfield.  
John Leveson Gower, Lord Gower.  
Charles Bruce, Lord Bruce of Whorlton.

Brownlow Cecil, Earl of Exeter.  
 John Ashburnham, Lord Ashburnham.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Henry Paget, Earl of Uxbridge.  
 Thomas Foley, Lord Foley.  
 Nicholas Lechmere, Lord Lechmere.

## CCLXI.

JANUARY 24, 1727.

The King's Speech, read on the 17th of January, stated, that 'he had received information on which he could entirely depend, that the placing the Pretender upon the throne of this Kingdom is one of the articles in the secret engagements at Vienna (between the King of Spain, Philip V, and the Emperor of Austria, Charles VI), and that if time should evince that the giving up the trade of this nation to one power, and Gibraltar and Port Mahon on the other, is made the price and reward of imposing upon this Kingdom a Popish Pretender, what an indignation must this raise in the breast of every Protestant Briton.' The result was that an address was voted in the Commons to the Crown by an enormous majority, 251 to 81, and very liberal supplies were granted. Palm, the Spanish Minister, advised the King of Spain to disavow the statement, and appeal to the English nation—Parliamentary History, vol. viii, p. 553. This occurred in March. On the present occasion Lords Strafford, Bathurst, and Bingley criticised the allegations, when a motion was made to the effect that the measures taken by the King were honourable, just, and necessary. This was carried by 98 to 25, and the following protest was entered.

1st, The resolution of the Committee being not only a justification of the measures therein mentioned, but tending to approve the counsels which have been given to the Crown relating thereto, we can by no means agree, that it fully appears they were honourable, just, and necessary, before they have been maturely and distinctly considered; the only question as yet debated in the Committee (except the resolution) being upon an address of advice to his Majesty for obtaining a further security from and confidence with his allies, in case of a rupture; which address appeared to us more seasonable and necessary, in the present conjuncture, than any vote of approbation; we therefore cannot concur in approving measures and counsels not yet examined into, the further consideration whereof may be also precluded by this resolution.

2ndly, The Papers hitherto laid before the House, in order to the consideration of his Majesty's Speech, are such only as concerned

the accession of the States' General to the Treaty of Hanover, and the letters and memorials since the arrival of the British fleet on the coast of Spain in America; but none of the negotiations or measures (which we suppose to have been many) that have been carried on between the Courts of Britain and Vienna, and the northern powers, which his Majesty's Speech and the resolution also may have relation to, have as yet been communicated to this House. But all those measures, and many others unknown (as we believe to this House) are, in our opinions, intended to be approved and justified by this resolution; to which therefore we cannot concur, no more than if it had declared the measures honourable, just, and necessary, which shall hereafter be taken for the purposes therein mentioned.

3rdly, Although we rely in the most dutiful manner, on the declaration made from the Throne concerning a secret dangerous engagement for placing the Pretender on the throne of these Kingdoms; yet finding, by the Papers laid before the House, that any such engagement or measure, for putting the same in execution, is absolutely denied on the part of the Crown of Spain (one of the supposed parties to the said engagement) we cannot agree to the resolution, because time may evince, that the informations his Majesty has received concerning that engagement were not justly grounded; and the measures taken to prevent the execution of them (whatever they were) not having been as yet particularly considered, we cannot declare them honourable, just, and necessary.

4thly, We find it charged in one of the Papers laid before the House, 'that very considerable sums of money have been sent and employed in France, Holland, Prussia, Sweden, and other places, to promote and accomplish the designs of the British Court:' which insinuation, as vile as we think it is, the Committee have not yet taken the same into their consideration, though a thorough examination into the grounds of that insinuation is, in our opinions, absolutely necessary for the honour of his Majesty's Government, and the satisfaction of this House; we cannot therefore agree to the resolution, which, as we conceive, may be construed to stop all future inquiries into this matter.

5thly, Whatever measures may have been taken to preserve Gibraltar and the Isle of Minorca, yet we cannot agree to declare them honourable, just, and necessary, before they have been fully

considered in the Committee; and the rather, because we find it asserted, on the part of Spain, in one or more of the memorials before the House, ‘that a positive promise has been made, on the behalf of Britain, for the restitution of Gibraltar to Spain;’ on the performance of which promise Spain, as it appears to us, still insists: We cannot therefore agree to the resolution, before the truth and all the circumstances of that pretended promise are thoroughly examined into; which promise, if it should appear to have been made, as is asserted, we are of opinion, that it was highly criminal in those who advised it.

6thly, The measures taken for maintaining the British commerce and the tranquillity of Europe have not, as we think, been under the distinct consideration of the Committee, since the memorials and letters were laid before the House. The oppositions made, if any, on behalf of Britain at the Court of Vienna, to the Ostend Company, are unknown to us, as well as the circumstances relating to the late Baltic expedition. But yet all these matters were the proper consideration of the Committee; for which, and the other reasons above mentioned, we being apprehensive, that the resolution proposed may not give solid ground of satisfaction to the people of Britain, or to any foreign powers in alliance with us, or conduce to the honour of his Majesty’s Government, or the support of the dignity of his House, cannot agree thereto.

Nicholas Leke, Earl of Scarsdale.  
Charles Bruce, Lord Bruce of Whorlton.  
William Coventry, Earl of Coventry.  
Thomas Wentworth, Earl of Strafford.  
William Gordon, Earl of Aberdeen.  
John St. John, Lord St. John of Bletsoe.  
John Hervey, Earl of Bristol.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Edward Harley, Earl of Oxford and Mortimer.  
Allen Bathurst, Lord Bathurst.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
Thomas Foley, Lord Foley.  
James Compton, Lord Compton.  
Nicholas Lechmere, Lord Lechmere.  
Charles Butler, Lord Weston (Earl of Arran).  
John Leveson Gower, Lord Gower.  
Samuel Masham, Lord Masham.

## CCLXII.

JANUARY 24, 1727.

On this a motion was made, ‘that an address be made to the King to press the King of Prussia, and the States’ General to concur with him in case of a war with Spain.’ This motion was negatived, and the following protest was inserted.

The address proposed representing, as we think, the present state of the late defensive alliance made at Hanover, which, for aught appears to us, is the main support on which Britain can depend, besides its own strength, in case of a general rupture in Europe, we thought it highly necessary that it should have passed into a resolution, whereby his Majesty’s hands might have been strengthened in his further concerts with his allies, and such further measures effected as are necessary to preserve his alliances during the war, against the dangerous combinations levelled against Great Britain, and by which such a repartition of conquests, in case of success, might be previously settled, as in the event would prevent the loss of a just balance of power in Europe. And we are the more convinced of the necessity of the advice proposed in the address, because we find, in one of the letters laid before the House, that a proposition has been made by the Court of Spain to the King of France, though not agreed to, to declare himself against Great Britain, on a pretence (which we hope is groundless) that the defensive alliance between Great Britain and France doth no longer subsist.

Nicholas Leke, Earl of Scarsdale.  
 William Coventry, Earl of Coventry.  
 Thomas Wentworth, Earl of Strafford.  
 John St. John, Lord St. John of Bletsoe.  
 Allen Bathurst, Lord Bathurst.  
 John Leveson Gower, Lord Gower.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 James Compton, Lord Compton.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Charles Bruce, Lord Bruce of Whorlton.  
 William Gordon, Earl of Aberdeen.  
 John Hervey, Earl of Bristol.  
 Thomas Foley, Lord Foley.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Nicholas Lechmere, Lord Lechmere.  
 Samuel Masham, Lord Masham.

## CCLXIII.

JANUARY 24, 1727.

It was next proposed to take the King's Speech into consideration this day week. This was rejected, and the following protest entered.

1st, Because the Committee having sat one day only on the consideration of his Majesty's Speech, could possibly deliberate but upon a few of the many weighty points which arise thereon ; on all which the advice and support of this House, in our opinions, is absolutely necessary ; and since even the facts relating to many of these weighty matters have not, as we conceive, been yet laid before the House, we think the further consideration of the Speech should not have been refused, there not being, as we believe, any precedent for such a refusal, under the like circumstances, on the Journals of this House.

2ndly, His Majesty's Speech containing the causes of calling his Parliament, and the advice of the House to the Crown being required thereon, the refusal of the day proposed, seems to us tending to disable this House from discharging their duty to the Crown, as well as to the Kingdom, in this critical and dangerous juncture ; and as the further consideration proposed is thereby at present refused, the precedent, as we fear, lays a foundation for depriving this House in future times of any opportunity at all for such considerations, by which means this House must, in our opinions, be rendered useless in those great affairs, whereon the safety and support of the liberties of the Kingdom may depend.

Charles Bruce, Lord Bruce of Whorlton.  
 William Coventry, Earl of Coventry.  
 Nicholas Leke, Earl of Scarsdale.  
 William Gordon, Earl of Aberdeen.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Thomas Wentworth, Earl of Strafford.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 John Leveeon Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.  
 John Hervey, Earl of Bristol.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 James Compton, Lord Compton.  
 Thomas Foley, Lord Foley.  
 Nicholas Lechmere, Lord Lechmere.  
 John St. John, Lord St. John of Bletsoe.

Charles Butler, Lord Weston (Earl of Arran).  
Samuel Masham, Lord Masham.

## CCLXIV.

APRIL 19, 1727.

The annual Excise Act, continuing duties on malt, mum, cider, and perry (13 George I, chapter 7), contained a clause of appropriation, enabling 'the King to apply such sums of money as shall be necessary for answering or defraying such expenses and engagements, as have been, or may be entered into before or until the 25th of December, 1727, inconcerting such measures as his Majesty in his great wisdom thinks will best conduce to the security of the trade and navigation of this Kingdom, and to the preserving and restoring the peace of Europe.' The land tax was this year at 4s. in the pound. The proposal caused a very warm debate in the Lower House on the 12th of April (one Member, Mr. Hungerford, saying, that after the grant of 4s., if they passed this clause, it would be tacking a tail to a whale which might sweep away the other 16s.), but was carried by 225 to 109. The third reading in the Lords was carried by 73 to 17, and the subjoined protest entered, which is in substance the same argument as was urged for the rejection of the clause in the Lower House.

1st, Because in this Bill it is enacted, that 'out of the aids or supplies granted this Session of Parliament, there shall and may be from time to time issued and applied such sum or sums of money as shall be necessary for and towards answering and defraying such expenses and engagements as have at any time been, or shall before or until the 25th day of December, 1727, be made by his Majesty, in concerting such measures, as he in his great wisdom thinks will best conduce to the security of the trade and navigation of this Kingdom, and to the preserving and restoring the peace of Europe;' which clause, we think, is inconsistent with that part of the Bill, which forbids the supplies to be issued to any other purpose than those specified, and renders ineffectual that appropriation of the public money, which the wisdom of many Parliaments has thought, and, we are convinced, ought to be thought a necessary security against the misapplication of it.

2ndly, Because there is no provision in the Bill to oblige any person to give an account of any money that shall be disposed of by virtue of the power in this clause.

3rdly, Because there are sufficient sums granted to answer every particular purpose that money can be wanted for, as far as our

present views can reach ; and if any unforeseen emergency should demand a further supply, we should think that might be provided for, as has been formerly practised, when necessity required ; and we are persuaded this might be done with less inconvenience than by this delegation of almost a dictatorial authority, at least till the Parliament could be called together, who have given so many instances of their zeal for his Majesty, that he could have no room to doubt of their readiness to make good whatever he should have expended for the advantage of his people.

4thly, Because we think, that absolute powers ought to be given in a free Government only upon occasions of evident necessity, and when the very being of the Government is in danger ; and though we allow our present circumstances to be as melancholy as they have almost at any time been, yet we think it a very improper remedy for our present state to depart from the approved, and in our judgment, essential forms of giving the public money ; nor can we be persuaded, that it is the only, or even the best expedient that can be found to extricate us out of our unhappy situation, to repose such a confidence in the Crown, in the disposition of immense sums of money, as may by the advice of wicked and incapable ministers (if it should be our misfortune ever to have such) be attended with great prejudice to our properties, and great danger to our liberties, with the hopes of the preservation of which we cannot flatter ourselves, but by a strict adherence to those excellent Parliamentary methods, of granting all sums of money only upon estimates, and for services publicly avowed.

5thly, Because the precedents that were offered to justify this cause were far from giving us any satisfaction ; for if they had been plain and full to the point (which we think they were not), yet, in our opinions, ought not to be followed, lest clauses of the same nature might become too frequent, and lest an unlimited power in the Crown to raise millions on our fellow subjects might be looked upon by degrees as a thing of course, and so at last the total power to levy and dispose of the people's money be given to one part of the legislature, which by our wise constitution is, and with safety can only be lodged in the whole.

Thomas Wentworth, Earl of Strafford.  
William Gordon, Earl of Aberdeen.  
George Booth, Earl of Warrington.

Nicholas Leke, Earl of Scarsdale.  
 William Craven, Lord Craven.  
 William Coventry, Earl of Coventry.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Thomas Foley, Lord Foley.  
 George Henry Lee, Earl of Lichfield.  
 William Greville, Lord Brooke.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Leveson Gower, Lord Gower.  
 Robert Benson, Lord Bingley.  
 Nicholas Lechmere, Lord Lechmere.  
 Heneage Finch, Earl of Aylesford.  
 Henry Maynard, Lord Maynard.  
 Allen Bathurst, Lord Bathurst.

## CCLXV.

MARCH 18, 1729.

Gibraltar was taken on the 3rd of August, 1704, by Sir George Rooke and the Prince of Hesse Darmstadt. The Prince wished to hoist the flag of the Archduke on the rock, but Rooke insisted on displaying the English colours, and treating it as a British possession. It was formally ceded to Great Britain by the tenth clause of the treaty of Utrecht (Almon's treaties, vol. i. p. 173), the clause stipulating, however, that if the Crown of Great Britain should be hereafter disposed to alienate it, the first offer should be made to the King of Spain. In the negotiations entered into with the Pretender in 1725, and which led to the treaty of Hanover, it is stated that the price of the King of Spain's assistance should be the cession of Gibraltar, and Port Mahon in Minorca (also guaranteed to Great Britain by the treaty of Utrecht), and the fact that such a bargain was concluded was affirmed in the King's Speech of January, 1727. On the 11th of February, 1727, the place was besieged by the Conde de las Torres, but after four months the siege was raised. It appears, however, that in 1721 (the 1st of July) George I had written a letter to the King of Spain, in which he had expressed his willingness to treat for the restitution of Gibraltar. In the last year of George I, a motion for producing this letter was negatived in the Commons (on the 23rd January, 1727), but on the 18th of March, 1729, the letter was laid before the Houses (Parliamentary History, viii. 695). In the Lords a motion was made that 'for the honour of his Majesty, and the preservation and security of the trade and commerce of this Kingdom, effectual care should be taken in the present treaty.' This was rejected by 84 to 31, and another motion adopted to the effect that the House entirely relied on the King to maintain the rights of the Crown to Gibraltar and Minorca.—See Stanhope, xv. p. 131, &c. The treaty referred to is that which followed on the Convention of Pardo on the 4th of March, 1728 (N.S.) (Almon ii. 2) viz. the peace of Seville on the 9th of November, 1729 (Almon ii. 5).

The following names are inserted.

1st. Because we think our right to a place of such importance in our dominions should be secured by more than general stipulations which may be liable to different constructions and will probably be interpreted by the Spaniards in their own favor, however we shall insert them in ours.

2ndly. Because the King of Spain having claimed by his ministers several times, not only from the late King's positive promises, as he asserted it to be, but from our evidence of it too, by our instructions of strict confidence on which he gave it up to us, and having actually insisted on since he yielded it to us by treaty, it seems essential to us, that we should insist upon his making his acknowledgment of it in words as plain and strong as he has made his claim to it originally since, as far as we have heard, our plenipotentiaries have not been able to prevail upon him to show any satisfaction or relinguish his pretensions to it during the long course of these protracted negotiations, in which we have been unskillfully, no we lose, and we are sure we have been unfortunately involved.

3rdly. We think it is incumbent upon us to take particular care, that our right to it should not in the least be precarious, because, we apprehend, we have great reason to fear that the King of Spain's allies are very desirous to have it again in his hands, and no reason at all to believe that our own allies are solicitous to have it continue in ours. If there should be the least room left, upon a peace, for the King of Spain's pretensions to it, from any loose or doubtful expressions, we are apprehensive it may lay a foundation for uneasiness and animosity, and might interrupt a perfect harmony between us and a nation whose friendship must always be of the greatest advantage to us. We think our zeal to preserve our title to it, in that most effectual manner we proposed, would have terrified any wicked ministers even from the thoughts of giving it up, if ever we should be in such wretched circumstances as to have any who might think a war more dangerous to themselves than the nation, and who might for that reason be tempted to purchase an inglorious peace at the high price of so valuable a part of the British dominions.

Henry Monmouth, Duke of Beaufort.  
Henry Howe Howard, Earl of Berkshire.  
George Henry Lee, Earl of Lichfield.

Nicholas Leke, Earl of Scarsdale.  
 William Coventry, Earl of Coventry.  
 William Craven, Lord Craven.  
 Thomas Wentworth, Earl of Strafford.  
 Edward Harley, Earl of Oxford and Mortimer.  
 John Leveson Gower, Lord Gower.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Allen Bathurst, Lord Bathurst.  
 Montague Bertie, Earl of Abingdon.  
 Thomas Foley, Lord Foley.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Other Windsor, Earl of Plymouth.  
 Charles Butler, Lord Weston (Earl of Arran).  
 Richard Verney, Lord Willoughby de Broke.

## CCLXVI.

APRIL 18, 1729.

Great complaints were made about the depredations committed on British trade in the East Indies, and in particular, the towns of Liverpool and Bristol were loud in their remonstrances. The right to cut logwood in the Bay of Campeachy was the origin of the disputes between the English merchants and the Spanish authorities, and while the Board of Trade strongly asserted the right of the English in the well-known representation—it may be found in Parliamentary History, viii. 685—the Spanish Government as steadily affirmed the contrary, though they were willing to cede the right in exchange for the cession of Gibraltar. The Opposition claimed a return of the instructions given to Admiral Hosier, and founded a motion on it: ‘it appears to this House, that the expense of the squadron sent to the West Indies, under the command of Vice-Admiral Hosier, having been borne by this nation alone, though designed to prevent the Spaniards from seizing the effects belonging to his Majesty’s allies, as well as his subjects, which were on board the Flota or Galleons, and from applying the treasure to disturb the peace, and invade the liberties of Europe, has been an unreasonable burthen upon this Kingdom,’ which was rejected by 87 to 27.

The following protest was thereupon inserted.

1st, Because, we conceive, that our allies were, at least, as much concerned as ourselves, to prevent the Spaniards from disturbing the peace and invading the liberties of Europe, if there was at that time sufficient foundation to apprehend such attempts on the part of Spain, and because our allies, the French in particular, had a much greater share in the effects of the Galleons than the subjects of this nation, and by consequence were much more concerned in interest to prevent the King of Spain from seizing those effects.

2ndly, Because we not only took the whole charge of this ex-

pedition upon ourselves, but have increased our national forces, taken great numbers of foreign troops into our pay, and contracted to pay divers subsidies to foreign princes, when it has not appeared to us in any authentic manner, as we apprehend, that our allies have taken upon themselves any expense proportionable to this, in consequence of the Hanover Treaty.

3rdly, Because we are convinced, that the national expense and losses occasioned by this expedition do not only very far exceed any interest which the subjects of this nation can be supposed to have in the Galleons, but have likewise been much more considerable than any detriment which has accrued to Spain by delaying the return of the Galleons.

4thly, That by taking this expedition solely upon ourselves, we drew the whole resentment of the Court of Spain upon this nation, and gave the French an opportunity of healing the breaches which had been made between those two Courts, of acquiring a greater share than ever they had in a most beneficial branch of trade, and of acting rather the part of mediators than that of parties in the disputes.

5thly, We cannot help being of opinion, that this burthen was the more unreasonable, since it does not appear that this expedition has had the effect of obliging the Spaniards clearly to adjust the points in dispute between us, or effectually to secure to our merchants a just satisfaction for the great losses which they have sustained by the seizures and captures made by the Spaniards.

Henry Beaufort, Duke of Somerset.  
Nicholas Leke, Earl of Scarsdale.  
Thomas Wentworth, Earl of Strafford.  
James Compton, Earl of Northampton.  
John Leveson Gower, Lord Gower.  
William Coventry, Earl of Coventry.  
Thomas Windsor, Lord Montjoy (Viscount Windsor).  
William Craven, Lord Craven.  
Edward Harley, Earl of Oxford and Mortimer.  
Thomas Foley, Lord Foley.  
Other Windsor, Earl of Plymouth.  
Richard Verney, Lord Willoughby de Broke.  
George Henry Lee, Earl of Lichfield.  
Allen Bathurst, Lord Bathurst.

## CCLXVII.

MAY 5, 1729.

On the 25th of February, a Committee of the House of Commons was appointed, General Oglethorpe being chairman, to report on the condition of English gaols, and on the treatment endured by prisoners confined there. The first report of this Committee gave an account of the Fleet Prison, and is printed at length in Parliamentary History, vol. viii. p. 703. Thomas Bambridge and Dougal Cuthbert, at that time joint wardens of the Fleet, had each paid £2500 for succession to the office of warden, previously held by John Huggins, who had bought the office himself from Lord Clarendon for £5000. The report discloses that Bambridge had been guilty of great extortion and cruelty in the exercise of his office, that he had organised a system by which the debtors were pillaged, and had connived at the escape of criminals, adducing numerous instances of his misconduct. The House of Commons on this report ordered the commitment of Bambridge and others to Newgate, and on the 25th of April sent a Bill to the House of Lords, to disable Bambridge from exercising his office of warden. The Bill was read a first time on the same day, and referred to a Committee of precedents. On the report of this Committee a conference was held with the Commons on the 26th of April. Bambridge was heard on petition on the 2nd of May. On the 5th of May the judges are ordered to prepare a new Bill, which is read twice on this day, carried through Committee on the 6th of May, passed and sent to the Commons on the 7th of May. It was returned from the House of Commons on the 13th of May, and received the royal assent on the 14th of May. It appears in the Statute Book as 2 George II, cap 32, and not only puts Bambridge out of his office, but disables him from being a Member of either House, and from holding any employment, civil or military, and using the office of attorney, solicitor, or agent, while it leaves him and his accomplices open to any prosecution on the part of any whom they have wronged.

The following protest is directed against the second reading of the Bill on the same day as the first.

1st, Because the reading any Bill twice the same day is against the Standing Orders of this House, which ought not to be broke but in cases of the utmost necessity, and even in those cases ought first to be considered in a full House: or else absent Lords, as well as the parties concerned in Bills, may be surprised.

2ndly, Because we do not conceive that there was the least necessity or occasion for reading this Bill twice in one day.

3rdly, Because we are apprehensive, this may be brought as a precedent hereafter to proceed in too hasty a way to pass Bills which divest men of their properties, and lay incapacities upon them during life.

George Booth, Earl of Warrington.  
 Thomas Wentworth, Earl of Strafford.  
 Maurice Thompson, Lord Haversham.  
 William Coventry, Earl of Coventry.

## CCLXVIII.

MAY 10, 1729.

On the 23rd of April, Mr. Scrope moved ‘that £115,000 be granted to the King, in order to make up the deficiencies of the civil list.’ It appeared that there was no deficiency; but when a motion was made for a secret Committee on the instance of Pulteney, the House of Commons rejected the motion, and carried the grant by 241 to 115. The list of names pro and con are to be found in Parliamentary History, vol. viii. p. 703. It was currently reported that this grant was made as a bribe to the King, in order to induce him to continue Walpole in office. It is certain that Walpole strongly urged the Court not to press for this grant, and that he underwent much obloquy for it. In the Lords a motion was made to reject the clause, but it was carried by 69 votes to 19.

The following protest was entered.

1st, Because we apprehend, that this part of the clause is neither founded on the words of the Act to which it refers, nor warranted by any construction thereof; for the provision made in that Act is, ‘That whenever the produce of the several duties and revenues thereby granted appears to be so deficient, that within any one year it should not be sufficient to answer and satisfy the sum of eight hundred thousand pounds, then, and not in any other case, such deficiency is to be made good out of the next aids in Parliament.’ As this Act therefore provides only for a real deficiency of the produce, and not for any arrear in the receipt within the year, as it has appeared by the accounts laid before this House, that the real produce was considerably more than sufficient to answer the sum of eight hundred thousand pounds, we think, there can be no colour to affirm that there has been any such deficiency as the Act can be supposed to provide for: This appears from the words of the clause, which directs the application of the sum of one hundred and fifteen thousand pounds for and upon account of arrears; and we cannot conceive the arrears provided for by this clause, and the deficiency described in the Act, to be one and the same thing, since if they could be so understood, the provision in the clause would have been made agreeable to the words of the Act, which relate to a deficiency only; and it would be highly unjust to his Majesty to direct the

sum of one hundred and fifteen thousand pounds to be refunded to the public at any time or under any conditions ; for if there had been a real deficiency, the grant to his Majesty should be absolute, and the sum of one hundred and fifteen thousand pounds would legally belong to him ; so that this clause either takes from his Majesty what we have no right to take, or it gives him what, as we conceive, he has no right to claim. As we cannot then consider this sum to be given either for a real deficiency, founded on the Civil List Act, or that it can be warranted by the said Act, as a supposed arrear, we conceive it to be a new grant to his Majesty, and a new burthen on the people, which does not appear to us to have been demanded by the Crown, and consequently not to have passed according to the forms hitherto practised and requisite in all such cases.

2ndly, This clause appears to us unreasonable on many accounts ; as there was no real deficiency at Midsummer, 1728, to which time the account is stated, so neither is there any arrear at the time when this new supply is granted, but the whole sum of eight hundred thousand pounds, and considerably more, was come into his Majesty's coffers, and he was, consequently, in possession of the very money, the supposed arrear of which is made good to him by this clause. Thus it seems to us, that the nation is loaded not to complete, but to augment the sum designed for his Majesty's civil list, and this at a time when the public debts are increased, when the taxes are heavily felt in all parts of the country, when our foreign trade is encumbered and diminished, when our manufactures decay, when our poor daily multiply, and when many other national calamities surround us. These considerations are in themselves very moving, and we apprehend that they must appear stronger, when it shall be further considered, that his Majesty would be so far from wanting any of these extraordinary supplies, that even without the provision in the Civil List Act, for making good deficiencies, he would be possessed of a far greater revenue than King William, Queen Anne, or even his late Majesty enjoyed ; and yet his present Majesty, then Prince of Wales, received out of the civil list revenues, during the reign of the late King, one hundred thousand pounds per annum, besides the entire revenues of the Principality of Wales and Duchy of Cornwall ; whereas it does not appear to us, that a like sum of one hundred thousand pounds per annum, or

even the revenues of the Principality of Wales, have yet been settled on his present Royal Highness.

3rdly, We cannot but be extremely apprehensive of the many ill consequences which may follow from a grant of money to the Crown, so ill grounded and so unreasonable as we conceive this to be. The advantage in favour of his Majesty, established by the Civil List Act, is very great, since, if the produce of the revenues granted and appropriated to the use of the Civil List does not answer the yearly sum of eight hundred thousand pounds, the deficiency is to be made good to his Majesty by the public; whereas no provision is made by which, if the produce of those revenues exceeds the sum of eight hundred thousand pounds, the surplus shall accrue to the benefit of the public. By this precedent, not only real deficiencies are to be made good, but supplies are to be given for arrears standing out at the end of every year which shall come in before supplies can be granted, though the supply given to make good arrears in one year will certainly increase the surplusages in another. When we consider the method which has obtained of anticipating the revenues, before they come to the Exchequer, contrary to the ancient and legal practice, when we reflect in what manner these accounts have been made up, and in what manner they have been brought in, we cannot but apprehend that the door is opened by this precedent for laying new and excessive charges on the nation. The revenues appropriated to the uses of his Majesty's Civil List are subject in their own nature to vary, and even when there is no deficiency in the produce, there may be arrears in the receipt; these arrears may easily be increased by the management of designing Ministers, by private directions to receivers, and by artful methods of stating the accounts; from all which we cannot but apprehend, that now this precedent is made, we may have frequent accounts of arrears, and a grievous and even intolerable load may be brought on the nation in a short time; and we are persuaded that his Majesty can have no satisfaction in finding his Court abound in wealth, whilst he may undergo the mortification of seeing his people reduced to poverty; neither can we conceive that the latter part of the clause is in any degree an adequate provision against the evil we complain of, or the apprehensions we entertain; for an account to be made up at his Majesty's demise will not prevent the consequences of this precedent during his life;

and as we hope that his reign will be long, so we may be allowed to fear that even during the continuance of it, this extraordinary method of increasing his Majesty's private revenue (already very ample) may prove a source of general discontent, which is but too apt to produce general disaffection.

Other Windsor, Earl of Plymouth.  
 George Verney, Lord Willoughby de Broke.  
 George Henry Lee, Earl of Lichfield.  
 George Booth, Earl of Warrington.  
 Henry Somerset, Duke of Beaufort.  
 John Leveson Gower, Lord Gower.  
 William Coventry, Earl of Coventry.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Edward Harley, Earl of Oxford and Mortimer.  
 James Compton, Earl of Northampton.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Wentworth, Earl of Strafford.

## CCLXIX.

MAY 12, 1730.

On this day, 'The Act to ascertain the custom payable for grain and corn imported,' &c., 2 George II, cap. 18, in which was inserted the clause granting £115,000 to the King, was read a third time and passed.

The following protest was inserted.

1st, Because, we conceive, there will accrue less detriment to the public, by rejecting this whole Bill, than agreeing to it with that part of the appropriation clause, which enacts the sum of one hundred and fifteen thousand pounds to be given to his Majesty for and upon account of arrears in his civil-list; since it would have been easy, had this Bill been rejected, to have provided for the general appropriation of the several aids granted in this Session of Parliament in some other manner.

2ndly, Because the revenue for defraying the expenses of his Majesty's civil Government being considerably more ample than that of any of his predecessors, we flattered ourselves that the public would not have been called upon again in so short a time to make an addition to that liberal provision for the Crown, though there had been some small deficiency in some of the duties appro-

printed to the service of us. But this, in our opinion, is so far from being the case, that we are firmly persuaded, if we had agreed to this Bill with that part of the clause, we should have consented to a grant of a new aid, and not to make good the deficiency of an old one, since it seems evident to us, that the produce of the civil-list funds, in the first year of his Majesty's reign, rather exceeded than fell short of eight hundred thousand pounds, even from those accounts delivered into the House, which, we believe, will be universally allowed to be free from any suspicion in favour of the people.

3rdly, Because we look upon this to be not only a grant of a new aid, but a grant made in such an irregular manner, without being demanded by the Crown, that it cannot but give us some reason to think, that however it may be wanted by the Ministers, it may possibly not be desired by his Majesty.

4thly, Because the literal interpretation of part of the Act for settling the civil-list revenues on his Majesty, which was contended for, in order to justify that part of this clause to which we object, seems to us liable to consequences very dangerous to the properties of all the subjects, by putting it into the power of those who have the management of the public money, to give the Crown a title to the arrears of the civil-list funds, though perhaps left on purpose in the hands of the receivers, and to a Parliamentary supply for those very arrears too.

5thly, Because the argument which was used, for passing the clause, from the smallness of the sum, seems to us a much stronger reason why it should not be asked, than why it should be granted.

6thly, Because, we observe, that whenever a supply for the civil-list has been asked in Parliament, it has caused great uneasiness in the nation, though demanded from the Crown itself, and upon pretences, in our opinion, more justifiable, and at times less unreasonable than this, when, notwithstanding our most prevailing methods of negotiation, the fate of Europe, as far as we are enabled to judge, is still in suspense, and we labour under difficulties that unavoidably attend such a doubtful and undetermined situation of our affairs abroad; when the complaints of the people at home are general and loud, and, as we fear, too well-founded on account of their poverty, and other calamities with which they have been long afflicted; and when, for that reason, it appears to us to be

not only a proper clemency, but true policy too, to avoid giving them the least ground to apprehend that the Parliament, by laying unnecessary burthens upon them, may itself become one of their grievances.

7thly, Because this attempt, when we consider it in all its circumstances, as far as appears to us, is without example, and we dread lest it should be made one, and laid hold of as a precedent hereafter, if ever the nation should have the misfortune to see a lavish, weak, and rapacious Ministry, armed with great power, desirous to raise such extraordinary supplies, in such extraordinary ways, more in reality to support their own inconsiderate and pernicious schemes, than the honour and dignity of the Crown.

Nicholas Leke, Earl of Scarsdale.  
 Other Windsor, Earl of Plymouth.  
 James Compton, Earl of Northampton.  
 Henry Somerset, Duke of Beaufort.  
 George Booth, Earl of Warrington.  
 William Coventry, Earl of Coventry.  
 Thomas Wentworth, Earl of Strafford.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 George Henry Lee, Earl of Lichfield.  
 John Leveson Gower, Lord Gower.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Allen Bathurst, Lord Bathurst.  
 Richard Verney, Lord Willoughby de Broke.

## CCLXX.

JANUARY 27, 1730.

The Treaty of Seville was concluded on the 9th of November (N. S.), 1729, and may be found in Almon's Treaties, vol. ii, p. 5. The first clause of the Treaty confirms the former treaties; by the second, the two Kings guarantee each other's kingdoms, &c. The most important clause was the sixth, which appointed commissioners to hear and determine disputes arising out of past transactions, the commission to last for three years. See Parliamentary History, vol. viii, p. 762; Stanhope's History, chap. xv, p. 134. William Stanhope, who negotiated the Treaty, was made Earl of Harrington. A separate article of the Treaty was the renewal of the famous Assiento contract (Almon, vol. ii, p. 11).

The following protest was entered against the resolution 'That the said Treaty does contain all necessary stipulations for maintaining and securing the honour, dignity, rights, and possessions of this Crown, and that all due care is taken therein for the support of the trade of

this Kingdom, and for repairing the losses suffered by the merchants, which was carried by 72 votes to 30.

Because we think this question, from the debate, as well as from the import of the question itself, was designed as a justification of the whole Treaty, which appears to us neither to be solid, honourable, nor advantageous, for the following reasons :

1st, Because we know not whether all the treaties and conventions concluded between England and Spain may be in every article of them so beneficial to us, as to be fit to be again confirmed and renewed.

2ndly, Because as we think it extremely difficult to examine with requisite nicety, how advantageous every treaty and convention between Great Britain and Spain may be to us, so we think it absurd to pretend to judge of any future agreement ; and therefore we think it very extraordinary, and apprehend it may be of very ill consequence to be bound, as we are by this Treaty, to ratify and guaranty whatever agreement shall be made between the King of Spain and the Dukes of Tuscany and Parma, concerning the garrisons once established in their countries.

3rdly, Because the obligation on our merchants to make proof of the justice of their demands, for their losses, at the Court of Spain, is, in our opinion, an hardship upon them, and not honourable for the nation ; and we are persuaded those unfortunate gentlemen will undertake so troublesome and expensive a journey with the less cheerfulness, because they may fear their claims are likely to be counterbalanced by others from the Spaniards ; and after all they have only the slender comfort of hoping, if they think there is even any room for them to hope, to get that redress by commissaries which they have not hitherto been able to obtain by plenipotentiaries.

4thly, Because we are obliged to assist in effectuating the introduction of six thousand Spanish troops into the towns of Tuscany and Parma, without specifying the methods we are to take, or charge we are to be at in giving that assistance ; so that, for aught we know, we may be liable to an endless trouble and unlimited expense to compass what, if effected, cannot, in our opinion, be of any advantage to us, but, as we fear, may prove most prejudicial and destructive.

5thly, Because we oblige ourselves to guaranty for ever, not

only to Don Carlos, but even to all his successors, the right to, and possession of the states of Tuscany and Parma; which we think is a stipulation of so extensive a nature, that we can hardly see we are ever like to be exempted from the disputes and quarrels it may too probably draw upon us.

6thly, Because this treaty differs from the Quadruple Alliance, upon which it is pretended to be chiefly founded, in some points that seemed to be thought essential by ourselves, as well as by the Kings of France and Spain, as far as we can judge by the stipulations of former alliances, particularly in that of introducing Spanish troops instead of neutral into Tuscany and Parma, and by stipulating that those troops shall remain there till Don Carlos and his successors are secure and exempt from all events; which, from the nature and extent of human foresight, we think, the warmest advocates for the Treaty must allow is in effect to say, they are to remain there for ever.

7thly, Because the alterations in this Treaty, from that of the Quadruple Alliance, are made not only without the consent of the Emperor, but we fear he will interpret it, since he has not the compliment paid him of being invited into it, almost in defiance of him. And if this treatment of him should unhappily alienate his friendship from us, we think we should, as good Englishmen, have great reason to lament the loss of such an ancient, powerful, and faithful ally.

8thly, Because we apprehend there is an artful omission throughout the whole Treaty of any plain and express stipulation to secure to us our right to Gibraltar and Minorca; which, however willing we are to attribute it rather to the superior skill of the Spanish managers, than to any want of zeal for their country in our own, is an error that we fear will leave our possession of those important places too liable to future cavils; and we think the Spaniards could not, with the least plausible pretence of reason, have refused to ascertain our indubitable right to them, in as strong and explicit terms as we have declared ourselves guarantees of the right, possession, tranquillity, and quiet of the Italian dominions allotted to Don Carlos and his successors, since we have had the complaisance to admit the Spaniards to discuss their pretensions for the restitution of the ships taken in the year 1718, though their right to that compensation was as effectually secured to them, as

it can be pretended ours is to Gibraltar and Minorca, by those general words that renew and confirm all former treaties.

9thly, Because his Majesty himself, by his Speech from the Throne, seems not entirely free from apprehensions of new troubles being still likely to arise in Europe, even in resentment of the present engagement; and if he thought this peace had settled the public tranquillity upon a lasting foundation, we are confident his paternal goodness would have inclined him, by a further reduction of troops, to have given more ease to his people, who had long groaned under the heavy burthen of taxes, almost insupportable, and a large standing army, and have had all their grievances increased by a pernicious interruption of late of that flourishing commerce, without which they can neither be happy at home, nor respected abroad.

10thly, Because it appears to us, after the most mature consideration of all particulars, that we are much farther obliged than we were before, and than we think we ever ought to be, to meddle in disputes about territories at a great distance from us, and in which our national interest seems no way concerned. And since one of the principal contracting parties in that Alliance upon which this is built is not only left out of it, but, as we think there is reason to believe, extremely disengaged by it; and since it seems impossible to make the introduction of Spanish troops into Tuscany and Parma, even by the most prevailing application we can use, consistent with the dignity and quiet of those Princes whose towns they are to garrison; we own ourselves, upon the whole, incapable of discerning either the equity or policy of this Treaty, which we fear will not enable us either to recover what we have lost, or long to preserve quietly and undisturbed what we yet possess; and which, we fear, instead of extricating us out of those difficulties that we have of late been involved in, and which have been owing in a great measure, in our judgment, to the incapacity of those Ministers, by whose counsels we have been entangled in a labyrinth of unnecessary, if not prejudicial treaties and engagements, will probably be the melancholy occasion of fresh disturbances, and bring upon us, already too much impoverished, the misery and confusion of a war, which if once kindled, we are convinced, it will be as difficult to know the end, as to determine the success of such a fatal event.

Nicholas Leke, Earl of **Scarsdale**.  
 Other Windsor, Earl of **Plymouth**.  
 Henry Somerset, Duke of **Beaufort**.  
 Thomas Wentworth, Earl of **Strafford**.  
 John Leveson Gower, Lord **Gower**.  
 Wriothesley Russell, Duke of **Bedford**.  
 Sackville Tufton, Earl of **Thanet**.  
 Arthur Annesley, Earl of **Anglesey**.  
 James Compton, Earl of **Northampton**.  
 William Coventry, Earl of **Coventry**.  
 Montague Bertie, Earl of **Abingdon**.  
 Theophilus Hastings, Earl of **Huntingdon**.  
 Richard Verney, Lord **Willoughby de Broke**.  
 Charles Bruce, Lord **Bruce of Whorlton**.  
 George Booth, Earl of **Warrington**.  
 Charles Boyle, Lord **Boyle (Earl of Orrery)**.  
 Thomas Windsor, Lord **Montjoy (Viscount Windsor)**.  
 Allen Bathurst, Lord **Bathurst**.  
 Thomas Foley, Lord **Foley**.  
 Heneage Finch, Earl of **Aylesford**.  
 Francis Willoughby, Lord **Middleton**.  
 Robert Harley, Earl of **Oxford and Mortimer**.  
 Scroop Egerton, Duke of **Bridgwater**.  
 John Hervey, Earl of **Bristol**.

## CCLXXI.

MARCH 16, 1730.

The annual Mutiny Act provided 'for 17,709 effectives including 1815 invalids, and 555 men, which compose the six independent companies for the service of the Highlands.' It was proposed to read this Bill a second time on the 20th of March. This was met by the counter motion for a second reading on the 18th of March, the amendment being carried by 28 to 19.

The following protest was inserted.

Because we conceive, that the consideration of the state of the nation, which is appointed for next Thursday, ought rather to precede than follow that deliberation, which will naturally arise upon the Bill of mutiny and desertion, concerning the keeping up in time of peace a standing army, and the method of governing that army, if any shall be judged requisite; which is a subject of such importance, that we think hardly anything of more moment can fall under our considerations, or that more requires the clearest light that can be had in order to form a judgment upon it, not unworthy a British House of Peers, zealous for

that freedom which has been delivered down to them from their ancestors.

Thomas Wentworth, Earl of **Strafford**.  
 Heneage Finch, Earl of **Aylesford**.  
 Price Devereux, Viscount **Hereford**.  
 Montague Bertie, Earl of **Abingdon**.  
 James Compton, Earl of **Northampton**.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Foley, Lord **Foley**.  
 Edward Harley, Earl of **Oxford and Mortimer**.  
 Henry Somerset, Duke of **Beaufort**.

## CCLXXII.

MARCH 19, 1730.

The celebrated Pension Bill was introduced into the House of Commons by Mr. Sandys, Member for Worcester city. A copy of this Bill, and an account of the debate held on it in the House of Commons, may be found in Parliamentary History, vol. viii, p. 789. It was carried in the Lower House by 144 to 134, as is said, by Walpole's connivance, who did not wish to incur the unpopularity of defending the existing custom in the Commons, and was sure that it would be thrown out in the Lords. See Stanhope, chap. xv, p. 136. This policy of Walpole led to the breach between him and Townshend. In the Lords a motion was made that 'an humble address be presented to his Majesty, that he would be graciously pleased to order to be laid before this House, a list of Pensions payable by the Crown.' This was lost by 83 to 30, and the following protest was inserted.

1st, Because we think this question ought to have been put and passed in the affirmative, since no instance could be given, that the list of pensions was denied, when called for by either House of Parliament; and we cannot imagine there can even be a more proper time to address to the Crown for the list to be laid before this House, when they are to enter upon the consideration of a Bill which is calculated to prevent the members of the House of Commons for the future from sitting or voting under any undue influence.

2ndly, Because, we conceive, the refusal of complying with this question will be misinterpreted without doors, whether the Bill shall pass or be rejected; for, in one case, it will give just reason to believe the list of pensions was filled with members of the House of Commons; and though this House would concur to prevent the evil, they were tender of exposing the names of particular persons: in the other case, it would raise a jealousy,

that there were too many members of this House who were upon the list; which aspersion ought, as we conceive, to have been obviated, by producing those lists, and making them public as in former times has been frequently done.

Henry Bowes Howard, Earl of **Berkshire**.  
Thomas Wentworth, Earl of **Strafford**.  
Henry Somerset, Duke of **Beaufort**.  
Thomas Foley, Lord **Foley**.  
Montague Bertie, Earl of **Abingdon**.  
John Leveson Gower, Lord **Gower**.  
William Coventry, Earl of **Coventry**.  
Edward Harley, Earl of **Oxford and Mortimer**.  
George Henry Lee, Earl of **Lichfield**.  
Allen Bathurst, Lord **Bathurst**.  
Heneage Finch, Earl of **Aylesford**.  
Price Devereux, Viscount **Hereford**.  
Sackville Tufton, Earl of **Thanet**.

## CCLXXIII.

MARCH 21, 1730.

The Pension Bill was read a second time, and on a proposal to commit it, a debate ensued, and the motion was negatived by 86 to 31.

The following protest was inserted.

1st, Because all objections against particular clauses of expressions in the Bill would have been regularly the subjects of debate in a committee, and might have been there removed, if it should have appeared necessary, by making such amendments to the Bill as the wisdom of the House should have thought proper.

2ndly, Because we conceive the general design of this Bill to be highly reasonable, and of the greatest importance to the constitution of Parliaments; and are therefore extremely concerned it should not receive even the countenance of a commitment, when the House of Commons, who alone would have been immediately affected by it, had passed it, as we apprehend, with so much regard to their country, and so much honour to themselves.

3rdly, Because this Bill does, in effect, enact nothing new, since it only enforces the observation, and prevents the evasions of former laws, which were judged necessary for the public good

by so many Parliaments, and which we do not apprehend that our experience since has given us reason to look upon as less necessary for the same purposes at this time. By one of those laws no person, who has a pension from the Crown during pleasure, can sit in the House of Commons; but the effect of this law was, or might have been evaded, in great measure, by grants of pensions for certain terms of years, wherefore we presume that examples have not been wanting. To remedy or prevent this abuse, it was enacted by another law, that no person, who enjoys a pension from the Crown for any number of years, shall sit in the House of Commons, under certain penalties therein mentioned; but the effect of this law likewise is, or may be entirely evaded several ways: it is or may be evaded by giving occasional gratuities or making annual presents, which will not be construed to fall under the denomination of pensions, and which are, however, in their nature, and must be in their effect, manifestly the same; it is or may be evaded also by the difficulty of discovering and convicting those who presume to break it, since there is ground to believe, by what has happened lately in this House, as well as on some other occasions, that the Commons would find it difficult to obtain those accounts which can alone shew what pensions are paid to particular persons. We observe further, that by the laws now in force all those who hold certain offices therein specified, as well as those who hold any offices erected since that time, are made incapable of sitting in the House of Commons; and that whoever accepts of any office or employment under the Crown cannot sit in that House till he has been re-elected. Now it appears to us, that all those good and laudable provisions may be rendered fruitless; that the House of Commons may be filled with persons who are by law incapable of sitting there; that the electors may be deprived of that reasonable option which the law has given them, whether they will trust the same person to represent them, after he has accepted an employment, whom they elected to represent them when he had none; and all this may be effected by the single expedient of getting an office or employment to be held by some person who is not a member of the House of Commons, in trust for one who is. We shall not determine on public fame or private suspicion, whether all or some of these abuses and evasions of so many Acts of Par-

liament have prevailed or not; but since it is evident, that they may be easily introduced under a corrupt administration, we must be of opinion, that a law which would prevent them as effectually as, we believe, the Bill sent up by the Commons would have done, could not have met with too great encouragement from this House, nor have been passed too soon.

4thly, Because it appears to us, that the arguments used against this Bill, drawn from the necessity or expediency of preserving an influence to the Crown by the power of rewarding, are either not at all to the present purpose, or else are applied to prove, that an influence guarded against by so many solemn Acts of Parliament should be admitted by the connivance of Parliament; and, we think, it would be much more for the honour of this House, if these arguments were of real weight, to be prevailed upon by them directly to repeal the laws above-mentioned, than, by rejecting a Bill designed to render those laws effectual, to seem, as we apprehend, to approve all the evasions of them, which have been or can be invented and put in practice.

5thly, Because we think, that although this Bill tends to restrain any legal and dangerous influence over the House of Commons, yet it leaves such an influence entire to the Crown as will appear at least sufficient, when we consider that there are in the present House of Commons hardly less than two hundred members who hold such offices and employments under the Crown, as would have continued to be tenable by them, if this Bill had passed; and even the power of granting pensions for life to members of Parliament openly would have still remained in the Crown.

6thly, Because, strictly speaking, all influence over either House of Parliament, except that which arises from a sense of those duties which we owe to our King and country, are improper; and the particular influences which this Bill was intended to prevent are not only improper, but may, and naturally must, in course of time, become extremely pernicious both to the Crown and to the people. For, first, although this influence appears to be that of the Crown, it may become virtually that of the minister, and be applied to deceive the Prince as well as to oppress the people. If ever a corrupt minister should have the disposition of places and the distribution of pensions, gratuities, and rewards, he may create such an influence as shall effectually deprive the

Prince of the great advantage of knowing the true sense of his people; and a House of Parliament being prevailed upon to approve such measures as the whole nation dislikes, so may be confirmed in the pursuit of them, and for the sake of an unworthy service lose the affections of his people, whilst he imagines that he both deserves and possesses them. In the next place, if ever this improper influence should obtain a certain degree of strength those terrible consequences must inevitably flow from it, that the worst proposals for the public will be the most likely to succeed, and that the weakest ministers will be the best supported; the reason whereof we take to be extremely plain, since this improper influence may be directed to any purpose whatsoever, and will always be most exerted where it is most wanted, that is, in the support of ill measures and weak ministers.

7thly, Because we agree, that as national or other circumstances have exposed the Crown to any new danger, the security of fidelity and allegiance given by the oaths of the subjects to the Crown has been increased from time to time; and we therefore think, that, by a parity of reason, some greater security than was formerly exacted should be now given to the nation, by their representatives, for a faithful discharge of the trust reposed in them; because this trust, which is the same as it was in every other respect, is come to be much greater than it was, in respect to those heavy taxes, which have been for many years past, and which, as we fear, must be for all succeeding times annually laid by Parliament on the people, as well as to those immense debts which have been contracted, and which we apprehend to have annually increased upon the nation. The service of the House of Commons was formerly a real service, therefore often declined and always paid for by the people; it is now no longer paid for by the people, and yet, far from being declined, it has been courted and sought after at great expense. How far these considerations, together with that of the vast increase of the Civil-List Revenue, and of the debts contracted on it in former reigns, deserve to enforce the reasons for exacting some new and stronger engagements from the members of the House of Commons to those whom they are chosen to represent is, we think, sufficiently obvious.

8thly, Although it must be allowed, that the multiplying of

oaths, without great and evident reasons, ought to be avoided, yet an oath being the most solemn engagement which men can be laid under, we judge it, on that very account, the more proper to be imposed upon this important occasion; nor will the probability of its being broke through by the iniquity of mankind be an argument of greater force against this Bill, than against any other law made for preventing any other crime whatsoever.

Theophilus Hastings, Earl of Huntingdon.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Other Windsor, Earl of Plymouth.  
 James Compton, Earl of Northampton.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Thomas Wentworth, Earl of Strafford.  
 Allen Bathurst, Lord Bathurst.  
 Robert Ker, Earl of Ker.  
 Henry Somerset, Duke of Beaufort.  
 Charles Spencer, Earl of Sunderland.  
 George Booth, Earl of Warrington.  
 Henry Bowes Howard, Earl of Berkshire.  
 John Leveson Gower, Lord Gower.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Montague Bertie, Earl of Abingdon.  
 Heneage Finch, Earl of Aylesford.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 George Henry Lee, Earl of Lichfield.  
 Thomas Foley, Lord Foley.  
 Price Devereux, Viscount Hereford.  
 Henry Maynard, Lord Maynard.  
 William Craven, Lord Craven.  
 William Coventry, Earl of Coventry.  
 John Hervey, Earl of Bristol.  
 Sackville Tufton, Earl of Thanet.  
 Samuel Masham, Lord Masham.

## CCLXXIV.

MARCH 21, 1730.

It was then moved that the Pension Bill be rejected. This was carried, apparently without a division, and the following protest was inserted.

1st, Because the evident intention of this Bill was only to make a further advance towards gaining that good end which the legislature hitherto has, we fear, too weakly endeavoured to compass, the prevention of corruption, which, it must be owned, is an evil of so mischievous a nature, so apt to spread and grow epidemical, that a

wise and virtuous people will apply the most timely and effectual remedies that can be devised for the cure of it, since a nation once infected must soon get the better of so contagious a distemper, or it will soon get the better of the nation.

2ndly, Because we can hardly frame in our own minds a more reasonable method than the sanction of such an oath of purgation as was to have been taken by all the members of the House of Commons, if this Bill had passed into a law, to preserve that part of the legislature pure and free from that kind of bribery, which seems, from the nature of it, to be the most pernicious, a secret and unavowed pension; or what, however different in name, would, we fear, be too much the same in effect, an office in trust, or a clandestine gratuity.

3rdly, Because the Act of Parliament which passed last year, though it contains some excellent provisions against bribery and corruption, and ought, in our opinion, ever to be held sacred, inviolable, and a fundamental part of our yet free constitution, wanted still something, as we judge, to make it more complete, by establishing an oath for the elected as well as the electors; which being done by this Bill, we cannot but look upon it to have been a seasonable and necessary addition to those laws already enacted for the same purpose, in order to guard us more strongly against the powerful and malignant influence of wicked, aspiring, and despotic ministers, who can invent no artifices so likely to subvert the liberties of the people, as by corrupting those who are chosen to defend them.

4thly, Because, we apprehend, the House of Commons may think themselves unkindly treated by us for rejecting a Bill sent from them of great consequence, by which they designed only to secure their own honour and the nation's liberties, and that concerned only their own members, without allowing it even the usual forms of a commitment; and the rest of our fellow subjects will, we fear, hardly be charitable enough to think that one House of Parliament could be perfectly unbiased, when it refused so proper an expedient to make, in a great measure, the other so.

Robert Ker, Earl of Ker.  
Other Windsor, Earl of Plymouth.  
Henry Somerset, Duke of Beaufort.  
Charles Spencer, Earl of Sunderland.

John Hervey, Earl of Bristol.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 George Booth, Earl of Warrington.  
 John Leveson Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.  
 William Craven, Lord Craven.  
 Theophilus Hastings, Earl of Huntingdon.  
 Henry Bowes Howard, Earl of Berkshire.  
 Thomas Wentworth, Earl of Strafford.  
 Montague Bertie, Earl of Abingdon.  
 Edward Harley, Earl of Oxford and Mortimer.  
 William Coventry, Earl of Coventry.  
 Heneage Finch, Earl of Aylesford.  
 George Henry Lee, Earl of Lichfield.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Foley, Lord Foley.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Henry Maynard, Lord Maynard.  
 Samuel Masham, Lord Masham.  
 James Compton, Earl of Northampton.  
 Price Devereux, Viscount Hereford.  
 Sackville Tufton, Earl of Thanet.

## CCLXXV.

MARCH 23, 1730.

The following protest was inserted against the third reading of the Mutiny Act.

Because, we think, that so large a number as is proposed to be kept up in this Kingdom for this year, by this Bill, is not necessary for our safety, as far as we can judge from the present conjuncture of affairs; and that a standing army in time of peace must be always burthensome to the people and dangerous to their liberties, for reasons often given by several Lords, and remaining upon the Journals of this House, to which we choose to refer, rather than repeat them, in order to prove a proposition that we think almost manifest in itself, or at least may easily be maintained by arguments undeniably convincing, and so obvious, in our opinion, that they must occur upon the least reflection to every Englishman who loves his country and his freedom.

Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Montague Bertie, Earl of Abingdon.  
 Thomas Wentworth, Earl of Strafford.  
 Henry Somerset, Duke of Beaufort.

## CCLXXVI.

APRIL 17, 1730.

Among the estimates of this year was that of pay for 12,000 Hessian troops<sup>1</sup>. In a debate on the state of the nation, a motion was made that the maintenance of these troops is burthensome and unnecessary. This view was advocated by the Earls of Abingdon and Strafford, and opposed by the Government, who referred to the text of the treaty of Seville, and commented on the fact that France and Holland had also foreign troops in their pay. At this time the Hessians were the mercenaries of Europe, the Princes of Hesse bargaining with various Governments for the sale of their subjects. Such an engagement, for example, is given in Almon's Treaties, vol. ii, p. 154. A similar convention had been entered into with George I and the Landgrave in 1726.

The following protest was made on the rejection of the motion by 80 votes to 21.

1st, Because, we think, the maintaining foreign troops in our pay, where we have no territory, and not only when we have no war, but immediately after a peace concluded with one of the most considerable powers in Europe, whilst we are in alliance with Holland, and are in strict friendship with France, the most considerable power of all, is a policy that, before this instance of it, cannot be paralleled, as far as we can recollect, in all our annals, and must be owing to the advice of ministers less cautious and less concerned for the true interest of this Kingdom than their duty obliged them to be; and we cannot, out of the regard we owe to our posterity, consent to it.

2ndly, Because the importance of the service, in which they are designed to be employed, does no way appear to us; and we fear it may create an apprehension that they may be intended for purposes that do not concern Great Britain; which is a jealousy (however ill founded) that we are persuaded, from his Majesty's goodness, he will always be inclined to prevent for his people's sake; and his counsellors, we think, ought, if possible, to prevent for their own.

3rdly, Because, we think, it would be an unreasonable burthen upon the people at any time, but we look upon it to be particularly so at this, whilst we are still heavily loaded with an immense national debt, severe annual taxes, oppressive and perpetual excises, and have had of late the additional misfortune of an unusual and

<sup>1</sup> The cost of these troops appears, from a debate in the House of Commons in the following year, to have been £241,259 1s. 3d. In 1730 it was stated that the grant would be for one year only, but the service was continued in 1731.

excessive dearness of almost all necessities for living, whilst our commerce, we cannot but fear, has been declining for some years, and many valuable branches of it running into other channels, from whence we have but little expectation of ever driving them again into our own ; when the dubious and unhappy situation of affairs, under which we have laboured of late, has reduced many substantial merchants to poverty, and has been productive of other ill consequences that, we apprehend, will be sensibly felt for some time by the whole nation ; when the sum which is to be allowed for the maintenance of these troops is at least six-pence in the pound on every landed man's estate in England ; and when we avowedly pay, at the same time, greater subsidies to other foreign princes than our present circumstances, in our opinion, can well bear, or than any wise reasons of state seem to require.

4thly, Because it does not appear to us, that his Majesty, either in any speech or by any message, has demanded any supply for what seems to us so extraordinary a charge ; and he seems not to think them necessary for our safety at home, since he has lately disbanded some of our own ; and we cannot find we are under any direct stipulation to maintain them for the safety of our allies abroad, who, notwithstanding the various engagements and multiplicity of treaties, with which we have, within the compass of a few years, most incautiously, as we fear, entangled ourselves, have no right to require succours from us, till by some molestation or hostile attack the public tranquillity is disturbed ; which misfortune may still, as we hope, be prevented, if such measures are taken as it becomes able and upright statesmen always to pursue, if the reputation of our wisdom and power is alone sufficient, as it ought to be, to procure us equal and useful alliances (and it always will be, when the affairs of the Kingdom are administered as they ought to be), and if to save our friends from dangers that perhaps are only imaginary, we do not run into real ones ourselves.

Henry Bowes Howard, Earl of Berkshire.  
Theophilus Hastings, Earl of Huntingdon.  
James Compton, Earl of Northampton.  
William Craven, Lord Craven.  
Nicholas Leke, Earl of Scarsdale.  
Thomas Wentworth, Earl of Strafford.  
Montague Bertie, Earl of Abingdon.  
Other Windsor, Earl of Plymouth.

Henry Maynard, Lord **Maynard**.  
 George Henry Lee, Earl of **Lichfield**.  
 Edward Harley, Earl of **Oxford and Mortimer**.  
 Charles Boyle, Lord **Boyle** (Earl of Orrery).  
 John Lovelace Gower, Lord **Gower**.  
 Heneage Finch, Earl of **Aylesford**.  
 William Coventry, Earl of **Coventry**.  
 Richard Verner, Lord **Willoughby de Broke**.  
 Thomas Windsor, Lord **Montjoy** (Viscount Windsor).

## CCLXXVII.

MARCH 2, 1731.

The Pension Bill was introduced into the House of Commons on the 1st of February, and was passed on the 17th of February, apparently without a division. A copy of the Bill may be found in Parliamentary History, vol. viii. p. 844. It was brought into the Lords on the 20th of February and read a first time, but was rejected on the motion for commitment. It was a remarkable feature in the debate, that the Bishop of Bangor, Sherlock, spoke against the Bill. One expression in his speech, that 'an independent House of Commons, or an independent House of Lords, is as inconsistent with our constitution, as an independent, that is, absolute King,' was much commented on.

The following protest was inserted.

1st, Because the reasons which were entered on our Journals last Session for the commitment, and against the rejection of this Bill, can, in our judgment, have nothing of weight said against them, and, as we think, they want little to be added to them, but they seem to us to be strengthened upon this occasion; and lest our second refusal to concur with the House of Commons in what solely regards their own members, and without any arguments offered to them in a Parliamentary way for that refusal, should be looked upon by them as an unkind, if not unprecedented treatment, and should, in the opinion of many disinterested lovers of our ancient frame of Government, too easily create in them a resentment that might interrupt the harmony between the two Houses, which is necessary for carrying on the most important affairs of the nation.

2ndly, Because the Commons seemed to think the Bill is wanted, and we are persuaded it is earnestly desired by the people, and so wisely contrived by a solemn and strict oath of purgation to guard against secret corruption in that place, where, if ever it should be prevalent, its consequences would be most pernicious and extensive, that we fear we should be exposed to some uncharitable suspicions,

if we did not, in this most authentic manner the constitution of Parliament will allow, from a becoming zeal to hinder the infection of so mischievous an evil from spreading among others, give an undeniable proof that we are untainted with it ourselves.

3rdly, Because a member of Parliament, who is not ashamed to accept a gratuity for any service which he is ashamed publicly to avow, must be conscious to himself, as we fear, that he is guilty of an immoral action ; and therefore we conceive ourselves obliged not only in policy but in conscience too, to yield our assent to a Bill that, as far as we could observe upon the most mature and serious reflection, contained a proper expedient, in this limited monarchy, to preserve both the innocence and independency of elected legislators, and that, we had reasonable hopes would, in a great measure have prevented the danger of an infamous breach of trust of the highest nature reposed in every single member of the Lower House for the benefit of the whole community ; which we think is a crime that ought to be dreaded by us, as good patriots, and that we are bound to abhor, as sincere Christians.

4thly, Because we cannot but, with grief of heart, lament the loss of that opportunity which, by enacting this Bill into a law, we assure ourselves, his Majesty would have embraced with particular satisfaction of demonstrating to all his subjects, that he is incapable of suffering an improper use to be made, by any of his servants, of that large revenue, which a Parliament, liberal beyond any example of his predecessors, so cheerfully gave him, or of entertaining to himself the least thought to the prejudice of the liberties or properties of his people, by any unjustifiable influence on their representatives.

Henry Bowes Howard, Earl of Berkshire.  
Thomas Wentworth, Earl of Strafford.  
George Henry Lee, Earl of Lichfield.  
Charles Bruce, Lord Bruce of Whorlton.  
James Compton, Earl of Northampton.  
Charles Cadogan, Lord Cadogan.  
Sackville Tufton, Earl of Thanet.  
John Hervey, Earl of Bristol.  
Other Windsor, Earl of Plymouth.  
Wriothesley Russell, Duke of Bedford.  
William Coventry, Earl of Coventry.  
George Booth, Earl of Warrington.

Thomas Foley, Lord Foley.  
 Scroop Egerton, Duke of Bridgwater.  
 Heneage Finch, Earl of Aylesford.  
 Montague Bertie, Earl of Abingdon.  
 Baptist Noel, Earl of Gainsborough.  
 Edward Harley, Earl of Oxford and Mortimer.  
 John Leveson Gower, Lord Gower.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Henry Maynard, Lord Maynard.  
 Peregrine Bertie, Duke of Ancaster and Kesteven (Great Chamberlain).  
 William Neville, Lord Abergavenny.  
 Allen Bathurst, Lord Bathurst.  
 Richard Verney, Lord Willoughby de Broke.

## CCLXXVIII.

FEBRUARY 17, 1732.

The Pension Bill was again carried in the Commons, the only incident connected with its passage in the Lower House, being a motion of Sir Robert Walpole that it be read a third time on the 10th of February instead of on the 7th of February, to which a reply was made by Pulteney, in which he said that he 'heard the Lords were tired of doing such \* \* \* work, that they were resolved to do no more of it, and if so, it is become necessary for us to do our own \* \* \* work ourselves.' The word omitted in the report is probably 'dirty.' Pulteney must have been misinformed, for the Pension Bill was rejected in the Lords on a motion for the second reading by 95 to 40. The debate on the Bill is to be found in Parliamentary History, vol. viii, p. 988.

The following protest is inserted.

For the reasons entered in the Journals of this House the two last Sessions of Parliament, one the 21st of March, 1729 (1730), and the other on the 2nd of March, 1730 (1731).

Anthony Ashley Cooper, Earl of Shaftesbury.  
 Thomas Wentworth, Earl of Strafford.  
 George Henry Lee, Earl of Lichfield.  
 Henry Maynard, Lord Maynard.  
 Montague Bertie, Earl of Abingdon.  
 John Leveson Gower, Lord Gower.  
 Thomas Foley, Lord Foley.  
 William Craven, Lord Craven.  
 Brownlow Cecil, Earl of Exeter.  
 Samuel Masham, Lord Masham.  
 Allen Bathurst, Lord Bathurst.  
 William Coventry, Earl of Coventry.

## CCLXXIX.

FEBRUARY 24, 1732.

The annual Mutiny Bill provided for 17,709 effectives and non-effectives, including the six Highland companies. An attempt was made in the House of Commons to reduce the effectives to 12,000 on the motion of Lord Morpeth. The debate in the House of Commons is given at length in Parliamentary History, vol. viii. p. 882. The vote was however carried by 241 to 171.

The following protest was entered against the second reading in the Lords.

Because, we conceive, that no countenance ought to be given to any Act that may possibly lessen the affections of the people to the King, they being his surest guard ; and we apprehend, that the keeping up, in time of peace, a greater number of forces than can be well governed by the established laws, is inconsistent with the notion of the government of a free people.

Montague Bertie, Earl of Abingdon.  
 Thomas Wentworth, Earl of Strafford.  
 John Hervey, Earl of Bristol.  
 George Henry Lee, Earl of Lichfield.  
 Brownlow Cecil, Earl of Exeter.

## CCLXXX.

MARCH 7, 1732.

On the order for going into Committee on the Mutiny Bill, a motion was made to reduce the effective force to 12,000 men. The motion was lost by 88 to 27, after a long debate, and the following protest, headed by Lord Abingdon, was entered.

1st, Because so great a number of troops as is established by this Bill was never before allowed by Parliament in time of settled peace, and no reason was given in opposition to the instruction, but what, we conceive, must equally hold good in all future times ; for when can we hope to see a Session of Parliament opened with more satisfactory declarations and stronger assurances of happiness and security, than those contained in his Majesty's most gracious Speech from the throne on the first day of this Session ? His Majesty is therein pleased to declare, 'that his expectations are fully answered ; that the general tranquillity of Europe is restored and established ; that the tedious work is perfected and finished ; that

the wounds which have been long bleeding are entirely healed; that the national expense will be considerably lessened, and that the nation shall reap the fruits of his endeavours.' In such a situation of affairs, we conceive that we could not act consistently with his Majesty's gracious disposition to his people, agreeably to the honour of this House, nor with that regard we must always have for the liberties of our fellow subjects, without endeavouring to reduce the number of troops specified in the Bill.

2ndly, Because the settled state of affairs at home, and the great duty and affection his Majesty's subjects have shewn to him on all occasions, should, in our opinion, be a full answer to all arguments that can be drawn to justify the keeping up so great a number of troops, from any apprehensions of a Pretender to the throne. For if the present circumstances of this nation be compared with the situation of affairs after the Treaty of Ryswick or that of Utrecht, these Kingdoms will be found infinitely more secure in that particular. In the first period of time, the late King James was living, who had an Irish army in his pay in France; many of his old servants and soldiers were then alive and active in England and Scotland; a potent Prince and nation always supporting him, and ready at any time to arm in his cause. As to the second period of time, the Pretender was in the neighbourhood of France, that the French King, who had maintained him and his family, was still living, and the Protestant succession had not then taken place; yet in both these points of time, half the number of troops allowed by the present Bill was not only thought by Parliament, but by experience found, sufficient for our security. How little foundation then does there seem to be for continuing such a number of forces at this juncture, when the Pretender has been long removed beyond the Alps, and a Prince on the throne of France who seems more intent to make his own dominions flourish by trade, than out of a restless ambition to disturb his neighbours! Sufficient reasons may be drawn from the present disposition of affairs in that Kingdom, as well as those of Spain, to increase our naval force, but none, in our opinion, for maintaining such an army at land. The present Royal Family is now (God be praised) firmly seated on the throne, and nothing can shake it but an administration which shall venture to depart from the principles on which the Act of Settlement was founded. That Settlement

was founded on liberty, and by the nature of things must be coeval with liberty.

3rdly, Because it has hitherto been thought the happiness of our situation, as an island, that we have not had the same occasion for numbers of troops to defend us as those on the Continent. To prevent the inroad of their neighbours, they have been obliged to keep up standing armies, which have generally been the cause of the loss of their liberties, and always proved the sure means of fixing their chains upon them.

4thly, Because we are fully convinced that his Majesty will reign the more firmly in the hearts of all his subjects, the more he places his confidence in them; and we conceive it to be an indignity to him, to suggest that he cannot now be secure on the throne, without the assistance of a greater standing force than ever his royal father was contented with in times of less tranquillity. Although it seemed to be the tendency of some arguments used against the question, yet we can never be brought to believe, that this nation is in danger of being overrun by any foreign force; our apprehensions are, that it only can be ruined and enslaved by a standing army at home; and we are justly jealous, from the experience of former times, that the Crown itself, as well as the liberties of the people, may be found at length to be at their disposal.

Lastly, We refer to the four first reasons entered on our Journal the 24th day of February in the year 1717, signed by many Lords of this House.

Charles Boyle, Lord Boyle (Earl of Orrery).  
Nicholas Leke, Earl of Scarsdale.  
George Henry Lee, Earl of Lichfield.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Thomas Wentworth, Earl of Strafford.  
Brownlow Cecil, Earl of Exeter.  
John Hervey, Earl of Bristol.  
William Coventry, Earl of Coventry.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
Thomas Foley, Lord Foley.  
John Leveson Gower, Lord Gower.  
Henry Maynard, Lord Maynard.  
William Craven, Lord Craven.  
James Compton, Earl of Northampton.  
John Carteret, Lord Carteret.  
John Hay, Marquis of Tweeddale.

Charles Howard, Earl of Suffolk.  
 Heneage Finch, Earl of Aylesford.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 Scroop Egerton, Duke of Bridgewater.  
 Allen Bathurst, Lord Bathurst.  
 Sackville Tufton, Earl of Thanet.  
 Robert Ker, Earl of Ker.

## CCLXXXI.

MARCH 29, 1732.

In the Committee of Ways and Means, the 9th of February, Walpole proposed that the salt duties of 5, 6 William and Mary, and the additional duties of 9, 10 William III, and all the duties chargeable on home-made salt, which had been repealed by an Act of 3 George II, cap. xx, should be revived for the term of three years. Walpole avowed that his object was to relieve the country gentry of the land-tax, which he proposed to reduce to one shilling in the pound, though he stated that unless the salt-tax was agreed to, he must demand two shillings. He held out hopes that the whole of the land-tax would be remitted in the following year. The debate on Walpole's proposal is given at length in Parliamentary History, vol. viii, p. 943. The resolution was carried by 205 to 176, and a Bill was prepared which was read a second time on the 2nd of March, when a further debate was taken, the Bill being read by 209 to 154. It was taken to the Lords on the 22nd of March, and the second reading was carried by 40 to 25. On the motion for committal, the 27th of March, a debate took place which is preserved—Parliamentary History, vol. viii, p. 1039,—and the Bill was committed by 40 to 25. While the Bill was in Committee, Lord Shaftesbury moved that salt used for manuring land should be exempt from duty, but the proposal was negatived by 74 to 21.

On this the following protest was inserted.

Because it has been found by experience, during the time the duties upon salt were taken off, that great improvements have been made in several parts of the Kingdom, by using salt in manuring of land; but by the revival of those duties, without the provision designed by this instruction, there must be a total stop put to all improvements of that nature; and we are convinced that in a few years the lands of England might have been raised, by the use of this manure, more than double what this tax will produce to the Government; and we apprehend this to be a very improper time to check the industry of the people, and prevent their domestic improvements, since, we fear, the national wealth is not likely to be increased at this time by any foreign commerce.

Scroop Egerton, Duke of Bridgewater.

Nicholas Leke, Earl of Scarsdale.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Thomas Wentworth, Earl of Strafford.  
 James Compton, Earl of Northampton.  
 John Hay, Marquis of Tweeddale.  
 George Booth, Earl of Warrington.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 George Henry Lee, Earl of Lichfield.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Charles Howard, Earl of Suffolk.  
 John Leveson Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.  
 William Coventry, Earl of Coventry.  
 Samuel Masham, Lord Masham.  
 Robert Ker, Earl of Ker.  
 John Carteret, Lord Carteret.  
 John Hervey, Earl of Bristol.  
 Sackville Tufton, Earl of Thanet.

## CCLXXXII.

MARCH 29, 1732.

A second motion was made to insert a clause exempting from all duties imposed in the Bill, all home-made salt used for victualling ships. The clause was rejected by 75 to 21, and the following protest inserted.

1st, Because the duties to be laid by this Bill on all home-made salt used for victualling of ships increases the expense of the Royal Navy, and is a heavy burthen upon the trade and navigation of the Kingdom, and will very sensibly affect the merchants, already under great difficulties by reason of the decay of trade and the many grievous losses they have sustained, and hardships they have undergone, by depredations, seizures, and confiscations, too severely felt by most of the traders of Great Britain, and too publicly known to be doubted of.

2ndly, Because this duty upon our home-made salt must occasion many of our merchants to victual their ships abroad, to the diminution of the national wealth, and to the great detriment of the landed interest of this Kingdom.

Thomas Wentworth, Earl of Strafford.  
 Nicholas Leke, Earl of Scarsdale.  
 George Henry Lee, Earl of Lichfield.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Seroop Egerton, Duke of Bridgwater.

John Hay, Marquis of Tweeddale.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Leveson Gower, Lord Gower.  
 Charles Howard, Earl of Suffolk.  
 George Booth, Earl of Warrington.  
 William Coventry, Earl of Coventry.  
 Robert Ker, Earl of Ker.  
 Samuel Masham, Lord Masham.  
 John Hervey, Earl of Bristol.  
 John Carteret, Lord Carteret.  
 James Compton, Earl of Northampton.  
 Allen Bathurst, Lord Bathurst.  
 Montague Bertie, Earl of Abingdon.  
 Sackville Tufton, Earl of Thanet.

## CCLXXXIII.

MARCH 29, 1732.

A third clause was prepared for insertion, ‘to restrain all officers engaged in changing, collecting, levying, or managing the salt duties from being a returning officer, or voting, or influencing any elector to vote in elections of members of Parliament.’ This clause was rejected by 71 to 21.

The following protest was inserted, and headed by Lord Abingdon.

1st, Because the officers employed in the customs in the excise, in other branches of the revenues, and in other parts of the public service, are already vastly numerous; they compose, in effect, a second standing army, and are perhaps, in some respects, more dangerous than that body of men properly so called; the influence which they have in the elections of members to serve in Parliament has been too often felt to be denied; and we presume, that examples are not hard to find, where the military forces have been withdrawn to create the appearance of a free election, and the standing civil forces of this kind have been sent to take this freedom away. Should we suffer this invasion on the freedom of election to continue, much more to increase, it will be easy, in our opinion, to demonstrate, that one vital principal of our present constitution and the freedom of the British Government must be lost, since the House of Commons might indeed afterwards be a representative of an administration, or of one single minister, but could no longer be a true representative of the people. We think ourselves obliged therefore to oppose the growth of so great an evil upon every occasion; and we apprehend that every such increase of

the officers of the revenue, as this Bill imports, is strictly such an occasion ; and therefore we think the instruction should have been agreed to, that we might not add to that evil which, we conceive, is already too great.

2ndly, Because from the very institution of Parliaments, at least from the time when they began to be composed and held in the manner and for all the purposes they now are, the principal aim of the enemies of public liberty has been to enable the Crown to govern without them, or to corrupt their members, or to destroy the freedom of their elections : from the same time we may date the constant care which has been taken by the friends of public Liberty to ward off those several dangers, and the laws which appear in our statute books for regulating elections of members to serve in Parliament, as well as the qualifications of the electors and the elected, are standing monuments, which shew how early those dangers began, and that the opposition to them began as early. The form of our Government, as it has been settled since the Revolution, leaves no longer room to apprehend the first of the attempts mentioned ; the wisdom of this House has seemed, by rejecting the Pension Bill three times successively, to think the laws already in force sufficient to prevent the second ; but the third must, in our opinion, be looked upon to be a growing danger, and to require extreme watchfulness against the consequence of it, as long as the many heavy taxes, and the present management of the public revenues keep up in all parts of the nation such an exorbitant number of receivers, supervisors, collectors, and other tax gatherers, who are maintained by the people, but are solely directed by the Treasury. The state of property, and the nature of tenants anciently, the real as well as pretended prerogatives in times more modern, gave to the Crown, among other influences, a very great one in the elections of members of Parliament. Thanks be to God, and to the virtue of our forefathers, this state of property is altered, these tenures are abolished, and these prerogatives are either taken away or limited, fined and fixed by law. There will remain therefore no means of destroying the freedom of elections, except those of corruption, which we hope, may be rendered ineffectual by the law to which this House consented two Sessions ago, to the entire satisfaction of the whole nation ; unless the dangers we are apprehensive of should arise by establishing such augmentations of the

number of officers employed in the revenue, without restrictions to prevent them from being returning officers, or voting or influencing any elector to vote in future elections.

3rdly, Because we apprehend, that if any such augmentations, without the aforesaid cautions are suffered to be made, greater danger will arise, from this new influence, to the freedom of elections, and by consequence to the constitution of our Government, than ever did arise when the prerogative was carried to the utmost height, and the influence of the Crown was the most severely felt and complained of. We apprehend that this exorbitant number of officers may, one time or other, effect the destruction of those liberties for the preservation of which the taxes were given, which these officers are employed to collect. We apprehend, that by consenting to the increase of these officers, without restriction, we shall contribute to such an influence as may prove more fatal to liberty than any of those which were formerly acquired, because it will be the effect of a Parliamentary establishment, and will make its way the more surely, by making it indirectly, secretly, and silently.

Thomas Wentworth, Earl of Strafford.  
Nicholas Leke, Earl of Scarsdale.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Scroop Egerton, Duke of Bridgewater.  
George Booth, Earl of Warrington.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
George Henry Lee, Earl of Lichfield.  
John Hervey, Earl of Bristol.  
Robert Ker, Earl of Ker.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
John Leveson Gower, Lord Gower.  
Allen Bathurst, Lord Bathurst.  
Charles Howard, Earl of Suffolk.  
John Hay, Marquis of Tweeddale.  
William Coventry, Earl of Coventry.  
John Carteret, Lord Carteret.  
Samuel Masham, Lord Masham.  
James Compton, Earl of Northampton.  
Sackville Thanet, Earl of Thanet.

## CCLXXXIV.

MARCH 31, 1732.

The Salt Bill was read a third time and passed on this day, and received the royal assent on the 3rd of April.

The following protest was inserted against the third reading.

1st, Because this tax has been found, by long experience, to be most grievous to the subject ; for which reason the Parliament lately, upon the recommendation of his Majesty from the throne, chose to repeal this, and the most oppressive part of the sinking fund, for the ease and relief of the subject ; it may therefore seem very extraordinary, that in so short a time, before the people have received much benefit from it, in a time of peace, and without any necessity (that appears to us) and when the supply might be raised with less charge and inconvenience within the year, we should have recourse to a tax too odious and oppressive to be continued, even for the payment of the National Debt.

2ndly, Because we have reason to believe the Parliament would not have cut off such a branch of the sinking fund (which has been esteemed so sacred and necessary) if it could have been thought that it could ever have been applied to any other use ; and it may give cause to apprehend, that the rest of the sinking fund may, by the same means and to the same purposes, be occasionally diminished, till it is reduced too low to satisfy the public creditors, and discharge the immense debts of the nation : which opinion, if it should once prevail, would effectually destroy the public credit, and involve the King and Kingdom in inextricable difficulties.

3rdly, Because this tax, instead of being applied to the payment of our debts, occasions the increase of them ; and instead of raising the supply within the year, which is always most eligible, even in time of war, if it can be done, and which method (if it had been taken at first and pursued) had left the nation free and unencumbered to us and our posterity, we now mortgage the revenue, in time of peace, for a term of years, though but a short one, and yet what the people may notwithstanding apprehend will be continued, and be made a precedent in all supplies for the future ; which method of anticipating the revenue must necessarily weaken the Government, by depriving it of the means necessary for its support in case of any sudden emergency of war, or other public

calamity, and in consequence throw all the weight of the public expense upon the landed interest, which will pay dear for the relief of one shilling in the pound only in this year's land tax.

4thly, Because it is liable to frauds and great deductions, which make the real produce into the Exchequer little, though it raises much upon the people; and is a great discouragement to the fishery, and a burthen upon the trade and navigation of the Kingdom.

5thly, Because it is not only a great burthen to the landed estates, and particularly to the grazing farms, but even a prohibition to all improvements of land, in those parts where it is used for manure.

6thly, Because as this excise is proposed without any apparent necessity, or convenience to the public, or even any real advantage, as is suggested, to the landed interest, it must necessarily create a jealousy in the people, that it is a step and introduction to a more general one; than which nothing can be more odious and dreaded, but a standing army, that must necessarily attend the execution of it.

7thly, Because Scotland being charged only with one shilling per bushel on salt, which is not a third part of the duty, introduceth an inequality in trade, contrary to that which seems established by the articles of the union, and tends to the keeping up invidious distinctions between the two parts of the United Kingdom. It may justly be doubted, if the exemption from this duty at the time of the union is a sufficient reason for the like now, since the duty was appropriated to the debts of England contracted before, and is now revived for the current service of this year; yet, under the appearance of favour, the people of Scotland will, at least, pay in three years the full sum of £24,672 for the saving of the one shilling in the pound land-tax in the current year, amounting to less than £12,000. So that Scotland, instead of being eased by this Bill, is doubly loaded and restrained in her trade upon account of this distinction; and all the bounties upon exportation, payable now there by law, are rendered precarious; and consequently this tax should not, in our opinions, have been imposed.

8thly, Because the subjects are laid under grievous penalties by this Bill, the incurring of which cannot, in many cases, be prevented, notwithstanding the strictest care; whereby the most in-

nocent may be subjected to the discretion and mercy of the Commissioners and officers of the revenue, wherein the greatest partiality may be exercised.

9thly, Because all taxes which require a multitude of officers to be employed in collecting them, and which give thereby both occasion and pretence to quarter numbers of useless subjects on the labour and industry of others, become so chargeable and oppressive, that they are hardly borne in the most arbitrary Governments; and that they seem repugnant to the very nature of a Government constituted like ours. The sole expense of levying this tax, added to the interest, which must be paid for loans made on the credit of it, will appear, on a fair calculation, sufficient to discharge, in a competent number of years, the principal and interest of the whole sum for which the supply is given. In point of good husbandry therefore, we think, that a tax of this nature should be rejected in any country where reason is not subdued by force, and where private will has not been yet received for law: but in a limited monarchy, like this of Great Britain, where the powers of the constitution are divided and balanced, and yet the whole executive power is intrusted to the prince, we apprehend, that these frequent and great augmentations of the number of officers appointed, directed and paid by the authority of the Crown, though employed in collecting and managing revenues, which are no part of the revenue of the Crown, ought to be esteemed dangerous to public liberty, and for that superior reason to be eternally avoided.

Scroop Egerton, Duke of Bridgewater.  
John Hay, Marquis of Tweeddale.  
Nicholas Leke, Earl of Scarsdale.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Thomas Wentworth, Earl of Strafford.  
George Booth, Earl of Warrington.  
John Carteret, Lord Carteret.  
James Compton, Earl of Northampton.  
George Henry Lee, Earl of Lichfield.  
Allen Bathurst, Lord Bathurst.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
John Hervey, Earl of Bristol.  
John Leveson Gower, Lord Gower.  
Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
William Coventry, Earl of Coventry.  
Robert Ker, Earl of Ker.

## CCLXXXV.

FEBRUARY 23, 1733.

The Pensions Bill was again brought forward by Mr. Sandys, who took the extraordinary course of not moving for leave to bring in the Bill, but for leave to bring up the Bill which he had in his hand. On the advice of the Speaker, this course was abandoned and the ordinary method, said to have been pursued for a century, was resorted to. The Bill was passed, brought to the Lords, and rejected on the second reading by 82 to 39.

The following protest was inserted.

For the reasons entered in the Journals of this House the 21st of March, 1729 (30) and the 2nd of March, 1730 (31).

Nicholas Leke, Earl of Scarsdale.  
 Charles Bruce, Lord Bruce of Whorlton.  
 William Coventry, Earl of Coventry.  
 Henry Bowes Howard, Earl of Berkshire.  
 James Compton, Earl of Northampton.  
 Scroop Egerton, Duke of Bridgwater.  
 Thomas Foley, Lord Foley.  
 John Leveson Gower, Lord Gower.  
 Thomas Wentworth, Earl of Strafford.  
 Allen Bathurst, Lord Bathurst.  
 George Henry Lee, Earl of Lichfield.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Edward Harley, Earl of Oxford and Mortimer.  
 Heneage Finch, Earl of Aylesford.

## CCLXXXVI.

MARCH 8, 1733.

The estimates for the army provided for 17,709 men, inclusive of non-effectives (1815) and the 555 men of the six Highland companies. As in the previous year Lord Morpeth moved in the House of Commons the reduction of the forces to 12,000, and a debate ensued. Parliamentary History, vol. viii, p. 1184. The motion was negatived by 203 to 136.

On the third reading in the Lords, the following protest was inserted.

For the reasons entered on the Journal last Session against the number of men then and now to be established; which reasons

we refer to, and think the circumstances of time now do by no means lessen the force of them.

Charles Bruce, Lord Bruce of Whorlton.  
 Thomas Wentworth, Earl of Strafford.  
 John Leveson Gower, Lord Gower.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 George Henry Lee, Earl of Lichfield.  
 James Compton, Earl of Northampton.  
 Allen Bathurst, Lord Bathurst.  
 John Hervey, Earl of Bristol.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Thomas Foley, Lord Foley.  
 Samuel Masham, Lord Masham.  
 William Coventry, Earl of Coventry.  
 Henry Bowes Howard, Earl of Berkshire.

## CCLXXXVII.

MAY 30, 1733.

On the 23rd of February Sir Robert Walpole proposed to take £500,000 out of the Sinking Fund, in order to meet the necessities of the year. The Sinking Fund consisted of all the surplus produced by any tax which had been appropriated to the payment of debt, over and above what was needed for the purpose. Walpole stated in the speech which introduced this motion that if it be not conceded, he must claim 2s. in the pound land-tax. The debate which ensued is preserved in Parliamentary History, vol. viii, p. 1200. See also Coxe's Walpole, vol. i, p. 371; Stanhope's History, chap. xvi.

The motion was carried in the Commons by 245 to 135. The application of the Sinking Fund, &c. Bill (6 George II, cap. xxv) was read a second time in the Lords on the 30th of May, when a motion 'that it is the opinion of this House that the produce of the Sinking Fund should be applied, for the future, towards redeeming such taxes as are most grievous to the subject, oppressive to the manufacturer, and detrimental to trade,' was brought forward by Lord Bathurst. The debate in the Lords will be found in Parliamentary History, vol. ix, p. 119. Lord Bathurst's motion was negatived without a division, and the following protest was inserted.

1st, Because we conceive, that it would have been extremely for the honour of the House, and for the service of the public, to have entered this resolution in our books at a time when we have so far consented, in compliance with the House of Commons, to a Bill by which near half a million, collected from the Sinking Fund in several years, is appropriated to the service of the present year.

2ndly, Because the Sinking Fund being composed of the surpluses of funds originally granted as securities to the creditors of the public, and these surpluses arising chiefly from a reduction of four per cent. of the interest granted them for the most part at the rate of six per cent., we cannot but think, that this saving ought to be applied, according to the most inviolable rules of equity, and according to the known design, and the repeated and solemn engagements of Parliament, to a gradual discharge of the principal due to these creditors of the public, who have parted with a third of their revenue in this view, and upon this confidence.

3rdly, Because we apprehend, that the method of applying large proportions of the Sinking Fund to the service of the current year must, in effect, perpetuate the debts and taxes which lie on the nation, and is therefore injurious to the public. Had this whole Fund been strictly applied from the beginning to its proper use, we think it may be demonstrated, not only that much more of the National Debt might have been discharged, but that those taxes which are most oppressive to the poor, and most prejudicial to trade, might have been already taken off, since upwards of £480,000 per annum, belonging, as we conceive, to this Fund, has been applied to other uses.

4thly, Because we apprehend, that it cannot be for the good of the nation, nor consequently for the honour of Parliament, to separate those interests in the particular appropriations of the Sinking Fund, and which were so wisely and so justly united in the original and general design of it, the interest of the nation, and the interest of the proprietors of the nation's debts. The former was intended to be eased, and for that purpose the latter were to be cleared as soon as possible. If it be said, therefore, that the creditors of the public do not desire to be cleared any faster than they are in the present method, nor object to the application of part of the Sinking Fund to other uses, we apprehend that no argument, which ought to avail in a House of Parliament, can result from such an assertion; because we conceive, that in every instance of this kind, in every application of the Sinking Fund, or of any part of it, we are to look on ourselves as obliged not only to be just to the creditors of the public, but to be careful of the ease of the people, to keep the

particular and general interests united, as they originally were, not to sever them. If in fact, the creditors of the public do not object to the application of such large proportions of the Sinking Fund to other uses than to the payment of the debts, it may be said, that no injustice is done them by any such application, according to the known maxim, *Volenti non fit injuria*; nay, it may be deemed for their private interest to have such beneficial mortgages continued to them as long as possible; and they may desire therefore not to be cleared any faster than they are likely to be in the present method. But we apprehend, that it cannot be for the interest of the nation to have these mortgages continued any longer than is absolutely necessary to discharge the debts secured by them; and that we, by consequence, who are trustees for the people, ought to desire and endeavour that the debts may be discharged, and the load of mortgages be removed as soon as possible. In this manner public faith would be strictly kept, justice would be done, no injustice could be done to the creditors of the public. In the other method, and by diverting such large portions of the Sinking Fund, if it should be granted that no present injustice was done to the proprietors of these public debts, yet it must be allowed, as we apprehend, that great injury is done to the nation, unless it can be proved that the unnecessary continuation of debts and taxes is a national benefit.

5thly, Because we conceive, that if the whole produce of the Sinking Fund were not to be applied to the discharge of the public debts, it would be much more for the ease of trade and advantage of the nation, that some of those grievous taxes out of which it arises should cease, than that they should be continued to supply the current service at four per cent. which might certainly be supplied by other ways at a cheaper rate. These taxes are not only grievous in themselves, but almost intolerable, by the manner of collecting them under the laws of Excise; laws so oppressive to the subject, and so dangerous to liberty, that every man, who wishes well to his country, must, in our opinion, desire to see them put to a speedy end. Most of these taxes were laid during the necessity of two long and expensive wars, and were granted only for terms of years, that so the principle and interest of the loans made on them might be paid off in a certain

limited time. Thus the nation consented to pay, in some manner, a double tax, in order to avoid the long and uncertain continuance of such grievous and dangerous impositions; and, according to the first design, many of them would have been very near the expiration of their term at this hour. The wisdom of Parliament, indeed, thought fit afterwards to throw these taxes, and the method of discharging the public debts, into another form, which now subsists; but we cannot conceive, that this was done with a view of continuing our taxes and our debts the longer; on the contrary, we are sure, it was done in the view of discharging both the sooner; and it is this very view which, we apprehend, must be fatally disappointed, if the present method of diverting any part of the Sinking Fund from the payment of the public debts be suffered to continue.

6thly, Because we apprehend, that this method may create the utmost uneasiness in the minds of his Majesty's subjects, and may tend, if not timely prevented by the wisdom and authority of this House, to diminish their affection for his person and government. Hitherto, whilst they have laboured under the weight of taxes, and groaned under the oppression of Excise laws, the hopes of seeing speedily an end of both has been their sole consolation; but nothing can maintain this hope, except a due application of the entire Sinking Fund to the discharge of those debts, for the discharge of which these taxes were intended and given. If some part of this Fund therefore continue to be mortgaged off, and other parts to be applied to the current service, even in the midst of profound peace, this hope must sink, and despair arise in its stead. We insist with greater concern and earnestness on this point, from our observation of what has lately passed on the occasion of attempts made to extend the cruel and arbitrary methods passed under the laws of Excise, and naturally and necessarily, as we apprehend, flowing from them. If any new law of this kind had passed elsewhere, we persuade ourselves, it could not have prevailed in this House. But we think it the more incumbent upon us, after such an attempt, and such national resentment expressed against it (both which are of public notoriety) to promote, as effectually as we are able, the quiet and happiness of his Majesty's reign, by cutting off any hopes or fears which may be still entertained that such a project will

some time or other succeed; and to this good and laudable end we conceive that nothing would have contributed more than such a solemn declaration of the sense of this House as is contained in the question.

John Russell, Duke of Bedford.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 George Henry Lee, Earl of Lichfield.  
 William Craven, Lord Craven.  
 Scroop Egerton, Duke of Bridgewater.  
 Charles Spencer, Earl of Sunderland.  
 Baptist Noel, Earl of Gainsborough.  
 Robert Ker, Earl of Ker.  
 William Coventry, Earl of Coventry.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 John Leveson Gower, Lord Gower.  
 Charles Bruce, Lord Bruce of Whorlton.  
 John Carteret, Lord Carteret.  
 Thomas Wentworth, Earl of Strafford.  
 Allen Bathurst, Lord Bathurst.  
 Samuel Masham, Lord Masham.  
 John Hay, Marquis of Tweeddale.  
 Sackville Tufton, Earl of Thanet.

## CCLXXXVIII.

JUNE 2, 1733.

On the 3rd of May, Lord Bathurst moved, ‘That the Directors of the South Sea Company be ordered to lay before this House an account how the produce of the forfeited estates of the Directors of that Company in the year 1720 has been disposed of, and all the orders made in the general courts of that Company relating to the disposal thereof.’ This motion was carried without a division, after a proposal to adjourn the House had been negatived by 35 to 31. On the 24th of May the accounts being before the House the debate was renewed.—Parliamentary History, vol. ix, p. 106. An attempt to move the previous question at one stage of the proceedings was lost by an equality of votes, 75 to 75, and the Directors were ordered to attend on the 1st of June for examination, and on the 2nd of June the proposal of Lord Bathurst to refer the transactions of the Company from the 2nd of February, 1720 (21) to a Select Committee of twelve, was rejected by 5 votes, 75 to 70.

The following protest was thereupon inserted.

1st, Because the present debt of the Kingdom being almost wholly incorporated into the three great companies, it behoves the legislature, who are the proper guardians of the public creditors, to

take all possible care that they suffer no injury in their estates, by any frauds committed in the management of them; for though the Directors are chosen by a General Court, they are invested with such extensive powers, that they are capable, by abusing their trust, of doing infinite mischief to the proprietors, unless their proceedings are vigilantly watched and controlled by that supreme authority under whose sanction they act, and by which only such practices can be effectually prevented or punished.

2ndly, Because this House having been induced, by the reasons before mentioned, to begin an inquiry into the management of the South Sea Company, we apprehend that our honour is engaged to answer those expectations which the public had so justly conceived from it; and since the advanced season of the year will not permit us to finish this examination during the present Session of Parliament, we apprehend, a Committee was the only proper way left to unravel such dark and intricate affairs, which require a very nice inspection into many voluminous books; it appearing to us, by what we have seen and heard at our Bar, that the accounts of the Company have been kept in a most confused, irregular, and unwarrantable manner, in order, as we apprehend, to conceal frauds and defeat all inquiries.

3rdly, Because the great distresses and calamities in the year 1720, having been occasioned by the Directors at that time declaring such extravagant dividends as the Company was not able to support, the legislature have, in all their acts relating to this Corporation, which have passed since that time, taken the utmost care to prohibit and restrain the Directors from being guilty of the like practices; yet, notwithstanding this, they have been so far from taking warning by the examples made of their predecessors, that it appears, by the accounts laid before this House, that although by the cash which came into their hands, and by the sale of four millions of stock to the bank, and by the loans of stock and otherwise, they were sufficiently enabled to pay off the debt of five millions four hundred thousand pounds then owing by the Company, as in justice and prudence they ought to have done; yet influenced, as we have reason to believe, by the corrupt views of some few, who may have assumed to themselves the whole management of the affairs of this Corporation, they left a great part of their debt, on bonds at interest, unpaid; and by unwarrantable dividends out of

the money, in order to give a fallacious value to their stock, multitudes of his Majesty's subjects have been defrauded ; and they have, without the knowledge of the proprietors, not only dissipated above two millions three hundred thousand pounds received from the Directors' estates, but they have likewise brought a new debt of two millions upon the Company, and thereby diminished the capital of every proprietor's stock ; by which means great injury and injustice have, in numerous instances, been done to orphans and the reversionary heirs of these estates, to the great dishonour of the public faith, and discredit of the nation.

4thly, Because, although the Directors applied to Parliament in the year 1727, for their authority to dispose of the produce of the estates of the forfeiting Directors, pretended to be then remaining in their hands ; yet it appears, by the accounts now before us, that the greatest part of this money had been before actually divided out in extraordinary dividends ; and when, in order to give some colour to these proceedings, they obtained an Act of Parliament to dispose of these effects, they never called a General Court to acquaint them with the state of this account, or to take their directions for the application of any remaining part of these estates, notwithstanding they were expressly required so to do by the said Act.

5thly, Because there is reason to believe, from a general view of the same accounts, that there are many articles, hitherto unexamined, under which a multitude of frauds may be concealed ; such as buying, selling, creating, and issuing of bonds ; employing irregularly the cash of the Company which lay in their hands, whilst the proprietors were paying interest for money borrowed of the Bank ; in transacting stock abroad, and selling fictitious stock at home, with many other practices of the like nature, too long and various to be particularly explained. For these reasons, we conceive, it was absolutely necessary to have appointed a Committee, as the only method to distinguish the few who probably are criminal, from many gentlemen who may at present lie unjustly under the same imputation, especially at a time when a Bill was actually depending for dividing the capital of this Company, three-fourths into annuities, and leaving the remaining quarter to be a trading stock, with a large debt and demands upon it unliquidated, and the value of it consequently unknown ; which, should it pass into a law, will, in all probability, promote and encourage the infamous practice of

stock-jobbing, to the ruin of great numbers of his Majesty's subjects.

6thly, Because the other House have frequently appointed Commissioners to inspect the public accounts during the interval of Parliament, as the only practicable method of arriving at any knowledge in such affairs; a method, indeed, too much disused of late years: We therefore apprehend, that no just objection either was or could be made to a Committee, which is perfectly agreeable to the nature of our constitution, cannot be of any prejudice to the Company, and, being confined to a particular inquiry, can give no grounds of apprehension to any but those who are afraid it may lead to further discoveries of iniquitous contracts and corrupt bargains in the settlement and transactions of this Company since the year 1720, which some persons have endeavoured with so much industry to conceal.

7thly, Because we think it highly expedient, at this time, to vindicate the public faith of the nation, lest foreigners should be induced, by the many instances of fraud and corruption which have been of late discovered in other corporations, suddenly to withdraw their effects out of our funds, and thereby totally destroy public credit, and plunge us into inextricable difficulties.

8thly, Because the arts made use of to divert us from our duty, and to defeat this inquiry, give us reasons to prosecute it with fresh vigour; for impunity of guilt (if any such there be) is the strongest encouragement to the repetition of the same practices in future times, by chalking out a safe method of committing the most flagitious frauds under the protection of some corrupt and all-screening minister.

9thly, For these reasons we think ourselves under an indispensable obligation to vindicate our own honour, by leaving our testimonies in the Journals of this House, that we are not under the influence of any man whatsoever, whose safety may depend on the protection of fraud and corruption, and that we entered upon this inquiry with a sincere and just design of going to the bottom of the evil, and applying to it the most proper and effectual remedies.

John Russell, Duke of Bedford.

John Hay, Marquis of Tweeddale.

Philip Dormer Stanhope, Earl of Chesterfield.

Allen Bathurst, Lord Bathurst.  
Thomas Wentworth, Earl of Strafford.  
William Coventry, Earl of Coventry.  
Richard Temple, Viscount Cobham.  
Henry Bowes Howard, Earl of Berkshire.  
John Carteret, Lord Carteret.  
George Henry Lee, Earl of Lichfield.  
Henry Howard, Earl of Suffolk.  
John Dalrymple, Earl of Stair.  
James Graham, Duke of Montrose.  
Charles Bruce, Lord Bruce of Whorlton.  
Alexander Home, Earl of Marchmont.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Samuel Masham, Lord Masham.  
Scroop Egerton, Duke of Bridgewater.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
John Leveson Gower, Lord Gower.  
Sackville Tufton, Earl of Thanet.  
William Craven, Lord Craven.

## CCLXXXIX.

FEBRUARY 13, 1734.

Many Peers who held offices under the Crown, had expressed their dislike to Walpole's Excise Bill, brought forward, and dropped in deference to the animosity expressed against the measure out-of-doors, in the Session of 1733. The Excise Bill was warmly supported by the Court as well as the Ministry, but Walpole feared, and the Queen was assured that an attempt to enforce it would lead to bloodshed. But Walpole was determined to shew his adversaries that his power with the King was unimpaired, and he therefore turned the Earl of Chesterfield, two days after the Bill was dropped, out of his office of Lord Steward, as well as Lord Clinton, the Earl of Burlington, the Duke of Montrose, and the Earls of Stair and Marchmont out of their offices and sinecures. It was a still stronger measure to deprive the Duke of Bolton and Lord Cobham of their regiments, but this step was taken and on the same grounds. As this was the last Session of the seventh Parliament of Great Britain, the Opposition, acting under the advice of Bolingbroke, determined on doing their best to make the administration unpopular. They attacked the Treaty of Seville in the House of Commons, Sir John Rushout moving for papers relative to that treaty on the 23rd of January (Parliament having met on the 17th of January), and were defeated by 195 to 104. This was followed by a motion of Sandys for the instructions given to the British minister in Poland in the year 1729, a motion which was rejected by 202 to 114; and by one of Mr. Waller, as to the part which the King had taken in bringing about the war between the Emperor and the Kings of France, Spain, and Sardinia (the war of the Polish succession), which was negatived without a division. Mr. Sandys again

renewed the attack, by moving that the King should be asked what application had been made to him by the several parties then engaged in the war, founded upon treaties or other engagements. This motion was negatived after debate by 195 to 102. The Opposition then betook itself to domestic matters. First, a petition of the tea-dealers against the Excise was presented, and a motion was made that it should be referred to a select Committee on the 4th of February. After a long debate the motion was negatived by 230 to 195, Sir Robert Walpole having been called to order for personalities by the Speaker. On the 6th of February the House of Commons debated the number of the land forces, which the Government proposed to increase by 1800 men, an increase which Sir W. Wyndham opposed, but in which he was defeated by 262 to 162. On the 13th of February, Lord Morpeth introduced a Bill 'to prevent any commission officer, not above the rank of a Colonel, from being removed unless by court-martial, or by address of either House of Parliament.' After a long debate, the motion for leave to bring in the Bill was negatived without a division. Mr. Sandys then moved for an address to the King, to know who advised the removal of the Duke of Bolton and Lord Cobham from their regiments. This motion was negatived by 252 to 151.

Similar motions were made and negatived or rejected in the Lords. But on the 13th of February, the Duke of Marlborough, in a very full House, presented a Bill for 'the better securing of the Constitution by preventing the officers of such land forces as shall at any time be allowed by authority of Parliament, from being deprived of their commissions, otherwise than by a judgment of a court-martial, to be held for that purpose, or by address of either House of Parliament.' After debate, the Bill was refused a second reading by 100 to 62, and the following protest inserted.

1st, Because the exigence of affairs in times past, or complaisance of former Parliaments, have for several years occasioned the keeping up a considerable body of land forces in this Kingdom; and as various events may happen to oblige future Parliaments to pursue the same measures, which nothing but the utmost necessity can justify, they being repugnant to the nature of our Constitution, and dangerous to the liberties of a free people; and as the whole disposition of the said forces is absolutely in the Crown, we cannot but think it highly reasonable, when so great an increase of power and influence, which was formerly occasional and rare, comes to be annually vested, and constantly exercised by the Crown, that some such limitations as proposed by this Bill are not only proper but necessary; and we are confirmed in that opinion, by the doctrine so often and so strongly laid down in this House, that the greatest danger to this nation, from a standing military force, must arise from the abuse of the power which

now subsists of cashiering officers, without any crime proved or alleged, and of garbling the army at pleasure; and we heartily wish that nothing had since happened to put us in mind of that doctrine.

2ndly, Because the employing or removing of all general officers would have been left in the Crown, if this Bill had passed into a law; for the enacting clauses were only to this purpose, 'that no Colonel or other officer of inferior degree, having his commission from the Crown, shall be cashiered or removed other than to an higher post, or discharged from his commission, or be deprived of the pay belonging to the same, in any other manner than by a court-martial to be appointed by a Commission under his Majesty's Sign Manual to any officer not under the degree of a field officer.' At the same time there is a provision in the Bill, 'that nothing shall extend to prevent his Majesty or his successors from disbanding, breaking, or reducing all or any of the regiments, troops, or companies now in being, or which shall or may be raised hereafter;' and it is further provided, 'that his Majesty and his successors may remove any officer upon an address of either House of Parliament.' We conceive, therefore, that, as those posts would still have remained, upon all vacancies, in the sole disposal of his Majesty, and the persons now possessing them are liable to be removed for any breach or neglect of their duty, by a court-martial, or by address of either House of Parliament, the prerogative of the Crown would no otherwise be abridged or altered than it has been on many other occasions, particularly in that instance of making the judges to hold their places, *Quamdiu se bene gesserint*, which was formerly during pleasure only; which alteration has been always approved, and, we hope, will in no time to come ever be attempted to be repealed.

3rdly, Because the practice of all the nations in Europe, even where the Government is most arbitrary, justifies the intention of this Bill; for no instance can be produced in any other Kingdom or State (as we believe) where officers are cashiered or deprived of their commissions, otherwise than by the judgment of a court-martial. How much stronger reason then have we of this nation to establish such a rule, since our officers are, many of them, in a capacity of having a share in the legislature, where it is absolutely necessary for the preservation of the Constitution, that every

member should be free and independent, and more particularly at this time, when we find the number of officers having seats in Parliament far greater than it ever was in time of war, when above three times the number of the present troops were kept on foot.

4thly, Although it was objected in the debate, ‘that in time of danger (upon suspicion of traitorous practices) it might be necessary to remove an officer from his post, though the informations might not be ready to be produced, or proper to be laid before a court-martial, and yet by such officer’s continuing in his post, great mischief might accrue to the public;’ we apprehend that objection received a full answer, ‘that in such a case an officer might be immediately put under arrest, or sent to some other post where he could not be dangerous.’ And, we conceive, such a method of proceeding will always be thought most proper where the crime is only suspected, but not capable of legal proof; for it must be allowed as unjust to condemn a man upon suspicion only, as it would be unreasonable to let a man continue in power who is justly under suspicion. That part of the prerogative, which will be always esteemed the brightest jewel of the Crown, the power of conferring grace and favour, would have remained entire, had this Bill passed into a law; and only the disagreeable part of inflicting punishments was designed to be limited, or rather secured by this Bill, from being turned to any ill use, by the private whispers of some malicious or vindictive minister, who may at any time hereafter unhappily get possession of the royal ear.

5thly, Because, the time for the new elections drawing near, we look upon this as the most favourable opportunity of passing so necessary a Bill, since hereafter the very great increase which may probably happen of the number of officers in Parliament may render the future passing of such a Bill totally impracticable; for while the officers of the army remain in their present precarious situation, they may be intimidated, by the threats of an unforgiving minister, from voting even for a Bill of this nature, and choose to purchase present security at the price of their own interests and their own future independence in Parliament, in which the liberties of their country are so much concerned.

6thly, Because we conceive the small degree of independence proposed to be given to the officers of the army, by this Bill, to be

necessary to prevent their being exposed to temptations, in which (though we are ready to do justice to the sentiments of honour and virtue in those gentlemen) we should rather lament than wonder to find a discouraged and indigent virtue yield to a criminal but prosperous compliance; especially should we have the misfortune to see an imperious, all-grasping, and power-engrossing minister, who may make their political submission to his oppressive and destructive schemes, the only test of their merit, and the only tenure of their commissions.

Hugh Fortescue, Lord Clinton.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
Charles Bruce, Lord Bruce of Whorlton.  
Nicholas Leke, Earl of Scarsdale.  
Thomas Wentworth, Earl of Strafford.  
Allen Bathurst, Lord Bathurst.  
George Booth, Earl of Warrington.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
Henry Howard, Earl of Suffolk.  
Samuel Masham, Lord Masham.  
John Russell, Duke of Bedford.  
Henry Bowes Howard, Earl of Berkshire.  
Thomas Thynne, Viscount Weymouth.  
Alexander Home, Earl of Marchmont.  
Charles Paulet, Duke of Bolton.  
George Henry Lee, Earl of Lichfield.  
Richard Temple, Viscount Cobham.  
William Feilding, Earl of Denbigh.  
John Hay, Marquis of Tweeddale.  
Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
William Craven, Lord Craven.  
Richard Verney, Lord Willoughby de Broke.  
Charles Spencer Churchill, Duke of Marlborough.  
Scroop Egerton, Duke of Bridgwater.  
Philip Dormer Stanhope, Earl of Chesterfield.  
James Graham, Duke of Montrose.  
George Brudenell, Earl of Cardigan.  
John Carteret, Lord Carteret.  
Robert Ker, Earl of Ker.  
John Leveson Gower, Lord Gower.  
Edward Harley, Earl of Oxford and Mortimer.  
Edward Griffin, Lord Griffin.  
Thomas Foley, Lord Foley.

## CCXC.

FEBRUARY 13, 1734.

The Bill was not only refused a second reading, but was rejected on the motion of the Earl of Scarborough. Lord Carteret then moved that an address should be presented to the King, with a view to learn who advised the removal of the Duke of Bolton and Lord Cobham from their regiments, and what were the crimes laid to their charge. This was debated, but negatived by 77 to 48.

The following protest was inserted.

1st, Because we conceive, that it is the inherent right of this House to address the Crown, to be informed who are the advisers of any measures that may be prejudicial to his Majesty's Government, or dangerous to the liberties of the nation.

2ndly, Because the removal of two officers of such rank and dignity, and of such known fidelity to his Majesty's person and Government, without any cause assigned, or any known or alleged neglect of their duty, gave the greatest alarm to many of his Majesty's most faithful subjects; we, therefore, thought it for his Majesty's service to give him this occasion to publish to the world the just grounds of his displeasure, or to detect the calumny of their accusers, and consequently to withdraw his confidence from such pernicious counsellors.

3rdly, Because that, as the practice of displacing officers has grown more frequent in proportion to the increase of their numbers in both Houses of Parliament, the world may entertain (however unjustly) an opinion that the free use of their votes has been the real cause of their disgrace; and the more so, since most of the persons who have been removed have happened to be members of one or other House of Parliament.

4thly, Because applications of this nature to the Crown may hereafter protect many of his Majesty's faithful subjects from the secret and malicious representations of some minister in future times, who, though unrestrained by sense of truth, regardless of his prince's real interest, and animated only by his own passions, may however be checked by the just apprehensions, that the applications of Parliament may lay open his calumnies, and bring upon himself the disgrace he had prepared for others.

Daniel Finch, Earl of Winchilsea and Nottingham.  
Arthur Annesley, Earl of Anglesey.

Nicholas Leke, Earl of Scarsdale.  
 Thomas Wentworth, Earl of Strafford.  
 Charles Bruce, Lord Bruce of Whorlton.  
 George Booth, Earl of Warrington.  
 Allen Bathurst, Lord Bathurst.  
 Henry Howard, Earl of Suffolk.  
 John Hervey, Earl of Bristol.  
 Henry Bowes Howard, Earl of Berksire.  
 William Feilding, Earl of Denbigh.  
 Montague Bertie, Earl of Abingdon.  
 William Craven, Lord Craven.  
 George Henry Lee, Earl of Lichfield.  
 John Russell, Duke of Bedford.  
 Charles Spencer Churchill, Duke of Marlborough.  
 Edward Griffin, Lord Griffin.  
 Alexander Home, Earl of Marchmont.  
 Scroop Egerton, Duke of Bridgwater.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Hay, Marquis of Tweeddale.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Samuel Masham, Lord Masham.  
 John Leveson Gower, Lord Gower.  
 James Graham, Duke of Montrose.  
 James Compton, Earl of Northampton.  
 John Carteret, Lord Carteret.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 Thomas Thynne, Viscount Weymouth.  
 Hugh Fortescue, Lord Clinton.  
 Richard Verney, Lord Willoughby de Broke.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Thomas Foley, Lord Foley.  
 George Brudenell, Earl of Cardigan.  
 Robert Ker, Earl of Ker.

## CCXCI.

FEBRUARY 13, 1734.

The two noblemen, whose regiments had been taken away, entered this separate protest.

Because we are not conscious that any neglect or breach of our duty can be laid to our charge, much less any want of zeal and attachment for his Majesty's person and Government; we therefore must testify our earnest desire, that this motion had passed in the affirmative, that we might have had an opportunity given us of knowing our supposed crimes and accusers, and, we hope, of justifying ourselves to his Majesty and the world.

Charles Paulet, Duke of Bolton.  
Richard Temple, Viscount Cobham.

## CCXCII.

MARCH 6, 1734.

In a debate on the Scotch Peerages, and on the means for determining the right of persons to such Peerages, the Marquis of Tweeddale proposed that the votes of the Scotch Peers at elections from their body for Peers of Parliament should be taken by ballot. This was opposed by the Government on the plea that such a change would be a breach of the Act of Union, in which it was declared that the election should be open. The motion was lost by 96 to 63, and the following protest inserted.

1st, Because this motion tending only to make a variation in the manner of electing the Peers for Scotland, we apprehend it is entirely agreeable to the intention of the 22nd Article of the Union; for whatever can contribute to make the election more free and independent, the more it answers the design of that Article; and we must observe, that this House has been so far from thinking the manner of election unalterable, that a Bill passed this House, by which the election itself was entirely abolished.

2ndly, Because in an election of this nature, the method of voting by ballot appears to us infinitely preferable on many accounts; for, as it is well known there are several alliances amongst that body of nobility, many of the Peers may be put under great difficulties, their alliances drawing them one way, and their opinion and inclination another way. It is also possible, that by pensions from the Crown, or by civil or military preferments, some of them may lie under obligations to a court, and be reduced to the hard necessity (under the power of an arbitrary minister) either of losing their employments, or of voting against their nearest relations and their own opinions also. We apprehend that no election can be called perfectly free, where any number of the electors are under any influence whatsoever, by which they may be biassed in the freedom of their choice.

3rdly, Because we apprehend that this House is, in a most essential manner, concerned in the freedom of this election; for if sixteen new members are to be brought in every new Parliament, under any undue influence, it may tend to subvert the independence of this House, and of consequence the constitution of the

whole Kingdom. By means of such an election, an ambitious minister may make use of the power of the Crown, at one time, to destroy the interest of the Crown; at another, to oppress the liberty of his fellow subjects; and, by different turns, protect himself from the just resentment of both.

4thly, As this House is the highest court of judicature, and the last resort in all matters relating to the properties of the subjects of Great Britain and Ireland, we conceive, that every person, who is master of any property, is concerned in the consequence of this motion; for if sixteen of these members, in whose hands this great trust is vested, should ever be thought to be in the nomination of a minister, the subjects of these Kingdoms may have great reason to dread the consequence of such unwarrantable influence, by which their liberties, lives, and properties might be rendered precarious.

Charles Spencer Churchill, Duke of Marlborough.  
Charles Boyle, Lord Boyle (Earl of Orrery).  
William Coventry, Earl of Coventry.  
Philip Dormer Stanhope, Earl of Chesterfield.  
John Dalrymple, Earl of Stair.  
Robert Ker, Earl of Ker.  
John Russell, Duke of Bedford.  
Alexander Home, Earl of Marchmont.  
Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
John Hay, Marquis of Tweeddale.  
Thomas Wentworth, Earl of Strafford.  
Hugh Fortescue, Lord Clinton.  
William Feilding, Earl of Denbigh.  
Charles Bruce, Lord Bruce of Whorlton.  
James Graham, Duke of Montrose.  
John Carteret, Lord Carteret.  
George Henry Lee, Earl of Lichfield.  
Allen Bathurst, Lord Bathurst.  
James Compton, Earl of Northampton.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
George Brudenell, Earl of Cardigan.  
John Hervey, Earl of Bristol.  
John Leveson Gower, Lord Gower.  
Thomas Thynne, Viscount Weymouth.  
Heneage Finch, Earl of Aylesford.  
Charles Paulet, Duke of Bolton.  
George Booth, Earl of Warrington.  
Henry Bowes Howard, Earl of Berkshire.  
Thomas Foley, Lord Foley.  
Richard Verney, Lord Willoughby de Broke.  
Richard Temple, Viscount Cobham.

Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Edward Harley, Earl of Oxford and Mortimer.  
 Maurice Thompson, Lord Haversham.

## CCXCIII.

MARCH 18, 1734.

Early in the Session of 1734, an attempt was made to weed the Scotch Peerage by establishing some rule to determine the validity of titles, there being at that time no court except the Court of Services, having power to rescind such titles. The clerks also who officiated at an election of Scotch Peers, had the right of admitting any claimant of a Scotch Peerage to vote. It was therefore proposed to limit the right of voting to all Peers whose ancestors had possessed the right since the 25th of April, 1690, and that no other claimant should be admitted until his right and title be determined by the Lords. The scheme dropped in consequence of its repugnance to the Articles of the Union, and the privileges of the Scotch Peers. At one of the adjournments of the debate on this subject, on the 1st of March, it was proposed by the Duke of Bedford 'that it is the opinion of this House, that any person or persons taking upon him or them to engage any Peers of Scotland, by threats, promise of place or pension, or any reward or gratuity whatsoever from the Crown, to vote for any Peer or list of Peers to represent the Peerage of Scotland in Parliament, is an high insult on the justice of the Crown, an encroachment on the freedom of elections, and highly injurious to the honour of the Peerage.' After a debate, the chief arguments of which are summarised in Parliamentary History, vol. ix, p. 487, the previous question was carried by 99 to 60, and the following protest inserted.

1st, Because we apprehend, that this resolution, being only declaratory of undeniable truths, ought not to have been avoided by a previous question, since, we fear, the leaving it undetermined may tend to encourage practices dangerous to our constitution in general, and to the honour and dignity of this House in particular.

2ndly, Because we think, this House cannot shew too strong an abhorrence of practices which, whether they have been committed or not in former elections, are yet of such a nature as may possibly be attempted hereafter by a minister, who may find it necessary to try all the methods to secure a majority in this House, either to promote his future ambitious views, or to screen his past criminal conduct.

Henry Howard, Earl of Suffolk.  
 Richard Verney, Lord Willoughby de Broke.  
 Alexander Home, Earl of Marchmont.

Thomas Wentworth, Earl of Strafford.  
 Allen Bathurst, Lord Bathurst.  
 Edward Griffin, Lord Griffin.  
 Thomas Foley, Lord Foley.  
 George Henry Lee, Earl of Lichfield.  
 William Coventry, Earl of Coventry.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Charles Paulet, Duke of Bolton.  
 Charles Spencer Churchill, Duke of Marlborough.  
 Henry Bowes Howard, Earl of Berkshire.  
 John Leveson Gower, Lord Gower.  
 John Hay, Marquis of Tweeddale.  
 Sackville Tufton, Earl of Thanet.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 John Russell, Duke of Bedford.  
 John Dalrymple, Earl of Stair.  
 Montague Bertie, Earl of Abingdon.  
 Heneage Finch, Earl of Aylesford.  
 Robert Ker, Earl of Ker.  
 John Hervey, Earl of Bristol.  
 Richard Temple, Viscount Cobham.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 James Compton, Earl of Northampton.  
 Charles Bruce, Lord Bruce of Whorlton.  
 John Carteret, Lord Carteret.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 James Graham, Duke of Montrose.  
 George Brudenell, Earl of Cardigan.  
 William Craven, Lord Craven.

## CCXCIV.

MARCH 26, 1734.

On the 23rd of January, the Earl of Westmorland presented a report from the Commissioners of the Board of Trade and Plantations, in pursuance of an address made to the King on the 13th of June, 1733, for an account of the laws made, manufactures set up, and trade carried on in the American colonies, which may have affected the trade, navigation, and manufactures of this Kingdom. The Lords took the matter into consideration and debated it, on the 7th of March, when the matter was referred to a select committee of forty. On the 26th of March it was moved, 'That the select committee appointed the 7th instant to consider of the representation of the commissioners for trade and plantations relating to the laws made, manufactures set up, and trade carried on in any of his Majesty's colonies and plantations in America, which may have affected the trade, navigation, and manufactures of this Kingdom,

be empowered to inquire of the proper methods for the encouragement and security of all trade and manufactures in the said plantations, which no way interfere with the trade of Great Britain, and for the better security of the plantations themselves,' when a division was taken on the question whether the words 'and security' after 'encouragement' and whether the last clause, 'and for the better security of the plantations themselves' should stand. The words were taken out by 52 to 28.

The following protest was inserted.

Because we apprehend, that if the safety of the plantations themselves is not thought a matter worthy the consideration of the Parliament, it is of little consequence to consider of their laws, manufactures, or trade.

John Russell, Duke of Bedford.  
 Thomas Wentworth, Earl of Strafford.  
 Henry Bowes Howard, Earl of Berkshire.  
 John Hervey, Earl of Bristol.  
 Montague Bertie, Earl of Abingdon.  
 George Henry Lee, Earl of Lichfield.  
 Heneage Finch, Earl of Aylesford.  
 William Craven, Lord Craven.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 John Carteret, Lord Carteret.  
 Allen Bathurst, Lord Bathurst.  
 Henry O'Brien, Viscount Tadcaster (Earl of Thomond).  
 James Graham, Duke of Montrose.  
 John Hay, Marquis of Tweeddale.  
 John Dalrymple, Earl of Stair.  
 Alexander Home, Earl of Marchmont.  
 Sackville Tufton, Earl of Thanet.  
 Charles Paulet, Duke of Bolton.  
 George Brudenell, Earl of Cardigan.  
 William Coventry, Earl of Coventry.  
 James Compton, Earl of Northampton.  
 John Leveson Gower, Lord Gower.

## CCXCV.

MARCH 26, 1734.

The question was put, 'Whether the said committee shall be empowered to inquire of the proper methods for the encouragement of all trade and manufactures of the plantations in America, which no way interfere with the trade of Great Britain, or which may be of use to Great Britain.' This instruction was negatived, it appears, without a division, and the following protest was inserted.

1st, Because we apprehend, that the new powers proposed to

be given to the committee, were not only expedient, but absolutely necessary, since by the account given by several Lords who attended the committee (and contradicted by none) it appeared to the House, that from the informations of merchants of undoubted credit, Jamaica, Barbadoes, and the Leeward Islands were in so defenceless a condition, that they might be taken in four and twenty hours; and we conceive, that such imminent danger of such valuable possessions required an immediate and minute examination, in order to discover the causes and nature of the danger, and to apply proper and adequate remedies.

2ndly, Because we conceive, that the chief reason urged in the debate, against this inquiry, is the strongest argument imaginable for it, viz. 'that it might discover the weakness of those islands in the present critical juncture, and invite our enemies to invade them;' whereas we think that this critical juncture calls upon us to put our possessions in a state of defence and security in all events; and since we cannot suppose that their present defenceless condition is unknown to those powers who are the most likely to take the advantage of it, we apprehend it to be both prudent and necessary, that those powers should at the same time know, that the care and attention of this House was employed in providing for their security. We likewise conceive, that such an argument may tend to debar a House of Parliament from looking into any of our affairs, either foreign or domestic. If in any transaction, at any time, there shall appear to have been a weak, negligent or treacherous management, the directors will never fail to lay hold of that argument to stop any parliamentary inquiry, and the fear of discovering a national weakness may be urged only to prevent the detection of ministerial negligence or guilt.

3rdly, Because we have found by experience, that we can never be too attentive to the preservation of the possessions and dependencies of this Kingdom, since treaties alone will not bind those Powers, who, from the proximity of their situation, from favourable opportunities, or other inducements, may be tempted to attack or invade them; but the interposition of a British Parliament will be more respected and more effectual than the occasional expedients of fluctuating and variable negotiations, which in former times have been often more adapted to the present

necessities of the ministers than to the real honour and lasting security of the nation.

4thly, Because we apprehend, the debarring this House from any inquiry into the conduct of ministers for the time past, or from giving their advice in matters of great concern to the public for the time to come, tends to destroy the very being of this House, and of consequence the whole frame of our constitution; and how melancholy a view must it be to all his Majesty's subjects to see the private property of so many particulars, and so advantageous a trade to the whole, refused to be brought under the inspection of this House; and yet (as far as it appears to us) totally neglected by the administration! And we are the more surprised to find this backwardness with regard to the interest of our colonies, since we are persuaded that the balance of trade at present is against us in all parts of the world, and only compensated in some degree by what we gain by our West India trade. Neither can we allow that they ought to be left to look after themselves, since they have a right to claim even more than the protection of their mother country by the great wealth they annually transmit to it, and the great duties they pay to the increase of the public funds and of the civil list; and we are fully convinced, that if this beneficial trade should once be lost, it will be irrecoverably lost, to the infinite damage of this Kingdom; for though the islands should be restored to us afterwards, the utensils and stock of Negroes being carried away, it would take up a long tract of time, and would be a very great expense to the public, to reinstate them in their present condition; we rather think it impracticable to restore them, though we can by no means suppose it difficult, by timely precautions, to prevent their destruction.

George Brudenell, Earl of Cardigan.

Thomas Foley, Lord Foley.

John Hervey, Earl of Bristol.

Philip Dormer Stanhope, Earl of Chesterfield.

Thomas Wentworth, Earl of Strafford.

John Leveson Gower, Lord Gower.

Henry Bowes Howard, Earl of Berkshire.

Daniel Finch, Earl of Winchilsea and Nottingham.

George Henry Lee, Earl of Lichfield.

John Russell, Duke of Bedford.

Sackville Tufton, Earl of Thanet.

Henry O'Brien, Viscount **Tadcaster** (Earl of Thomond).  
 James Graham, Duke of **Montrose**.  
 John Hay, Marquis of **Tweeddale**.  
 John Dalrymple, Earl of **Stair**.  
 Alexander Home, Earl of **Marchmont**.  
 Allen Bathurst, Lord **Bathurst**.  
 James Compton, Earl of **Northampton**.  
 Charles Paulet, Duke of **Bolton**.  
 Montague Bertie, Earl of **Abingdon**.  
 John Carteret, Lord **Carteret**.  
 William Coventry, Earl of **Coventry**.  
 William Craven, Lord **Craven**.

## CCXCVI, CCXCVII.

MARCH, 29, 1734.

A message was brought from the King on the 28th of March, calling the attention of the House to the war which had broken out in Europe, and still continued, and hoping that Parliament would support him in making such an augmentation of the forces as may be absolutely necessary for the honour and defence of the Kingdom. The message concluded by stating ‘that whatever augmentations should be made, or services performed, an account should be laid before the next Parliament.’ The effect of carrying the motion would be to give the administration power to act during the recess, and to withhold information till after the next election. For the character of the campaign of 1734 in Germany and Italy, see Stanhope, chapter xvi, p. 171. The motion of the Duke of Newcastle to comply with the King’s message was, after debate, carried by 101 to 58.

The following protests were inserted.

Because we are of opinion, that no free people should, on any occasion whatever, vest in any person an unlimited power for an indefinite time, and whenever they do, they at the same time resign their liberty.

Montague Bertie, Earl of **Abingdon**.  
 Heneage Finch, Earl of **Aylesford**.  
 Philip Dormer Stanhope, Earl of **Chesterfield**.  
 John Hervey, Earl of **Bristol**.  
 Charles Boyle, Lord **Boyle** (Earl of Orrery).  
 Sackville Tufton, Earl of **Thanet**.  
 Anthony Ashley Cooper, Earl of **Shaftesbury**.  
 Thomas Foley, Lord **Foley**.  
 James Compton, Earl of **Northampton**.  
 John Russell, Duke of **Bedford**.  
 Thomas Windsor, Lord **Montjoy** (Viscount Windsor).  
 James Graham, Duke of **Montrose**.  
 Richard Verney, Lord **Willoughby de Broke**.

Richard Temple, Viscount Cobham.  
Alexander Home, Earl of Marchmont.  
George Henry Lee, Earl of Lichfield.  
Allen Bathurst, Lord Bathurst.  
John Carteret, Lord Carteret.  
Thomas Wentworth, Earl of Strafford.  
William Graham, Earl Graham.  
Thomas Thynne, Viscount Weymouth.  
Richard Boyle, Earl of Burlington.  
Robert Ker, Earl of Ker.  
John Dalrymple, Earl of Stair.  
Henry Bowes Howard, Earl of Berkshire.  
George Brudenell, Earl of Cardigan.  
William Coventry, Earl of Coventry.  
John Leveson Gower, Lord Gower.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
John Hay, Marquis of Tweeddale.  
William Craven, Lord Craven.  
Hugh Fortescue, Lord Clinton.  
Edward Harley, Earl of Oxford and Mortimer.

1st, Because we conceive, an address of this kind, empowering the Crown to raise men and money, without specifying the number of the sum, is unwarranted by any precedent, and is of the most dangerous consequence; for it seems to us totally to subvert the very foundation of our constitution; the wisdom of our ancestors having provided many regular steps and solemn forms for granting supplies to the Crown. Whereas this new method of a sudden address, upon a message, at once frustrates and eludes all those wise and ancient precautions.

2ndly, Because the history of several countries, formerly free, furnishes us with many fatal examples of the abuse of such unlimited powers, whenever the estates of those countries have transferred the legislative authority of raising money from themselves, by an ill-placed confidence, into the hands of a few. The cortes of Spain, by trusting the power of raising money without their being assembled, though but for one year; and the estates of France, by allowing the aids for the defence of that Kingdom to be raised for three or four years together, without their being summoned to meet, have never been able to retrieve their ancient liberties and constitution; but by the weak compliance with such a fatal measure were the unhappy instruments of rendering themselves useless, and of enslaving their respective countries.

3rdly, Because though we have all possible confidence in his Majesty's wisdom and justice, and all imaginable zeal to the honour and support of his person and Government, we cannot approve of a message which, we are persuaded, was both formed and advised by the same ministers, in whom those extensive and discretionary powers are lodged by this address ; and we see no reason, from any experience of their past economy, to trust them with the arbitrary disposal of an unlimited sum, and as little reason, from the success of their former alliances, to give any approbation to past treaties, which have never been communicated to this House, or a previous sanction of any future treaties they shall contract ; especially since, by the multiplicity of negotiations, they have involved the nation in engagements with divers foreign Powers, inconsistent, as we conceive, with one another, and in so great a variety, we can by no means be sure that the best will be singled out to be fulfilled.

4thly, Because the present unfortunate situation of the affairs of Europe cannot be represented as unforeseen or unexpected, since from the gradual progress of our negotiations for some years last past, the gradual increase of the disorders and confusion in Europe has constantly been foretold. We therefore conceive, that had there not been some secret reason for proceeding in this manner (which reason we will rather pass over in silence, than attempt to point out) the necessary demands of men and money would have been laid before the Parliament at the beginning of the Session, according to the ancient and regular usage ; and which would as certainly have been granted by a Parliament which has distinguished itself by a remarkable zeal, duty, and liberality to the throne.

5thly, We cannot think it prudent, in order to extricate ourselves out of our present difficulties, to lodge these unlimited and, as we apprehend, dangerous powers in the hands of those very persons, under whose management and conduct these difficulties have been brought upon us. If, as we conceive, the national debts are hardly lessened by more than twenty years peace ; if our successive fleets have proved a terror to no nation, and but only a burthen to our own ; if our great armies have disturbed the minds of none but his Majesty's own subjects, this extensive power of raising money, fleets, and armies seems to us improperly intrusted in the hands of those ministers who have made no better use of the confidence already reposed in them.

6thly, We would, with the utmost zeal, concur in whatever might increase to his Majesty the affections of his people at home, or the respect of his neighbours abroad; but this zeal without knowledge, we think, can tend to neither of those desirable ends, but on the contrary, rather bring contempt, as we apprehend, upon the too easy and implicit faith of Parliaments, than add weight and dignity to those powers we lodge, without any visible reason, in the hands of the ministers.

Charles Boyle, Lord Boyle (Earl of Orrery).  
 John Leveson Gower, Lord Gower.  
 William Graham, Earl Graham.  
 George Henry Lee, Earl of Lichfield.  
 Thomas Foley, Lord Foley.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 John Hervey, Earl of Bristol.  
 John Dalrymple, Earl of Stair.  
 John Hay, Marquis of Tweeddale.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 John Russell, Duke of Bedford.  
 Allen Bathurst, Lord Bathurst.  
 Hugh Fortescue, Lord Clinton.  
 Henry Bowes Howard, Earl of Berkshire.  
 James Compton, Earl of Northampton.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Sackville Tufton, Earl of Thanet.  
 Heneage Finch, Earl of Aylesford.  
 Richard Temple, Viscount Cobham.  
 William Craven, Lord Craven.  
 James Graham, Duke of Montrose.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Alexander Home, Earl of Marchmont.  
 Thomas Wentworth, Earl of Strafford.  
 John Carteret, Lord Carteret.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Richard Verney, Lord Willoughby de Broke.  
 Robert Ker, Earl of Ker.  
 William Coventry, Earl of Coventry.  
 George Brudenell, Earl of Cardigan.  
 Thomas Thynne, Viscount Weymouth.

## CCXCVIII.

APRIL 11, 1734.

It has been stated above, that in 1733 (the 30th of May), Sir Robert Walpole proposed to take £500,000 out of the Sinking Fund for the year's supply, and that he carried his proposal by the threat of imposing

a land-tax of two shillings, if the suggestion was negative. In this year, and by the same argument, he appropriated the residue of the Fund. The committal of this Bill was carried by 94 to 51, and the following protest was inserted.

1st, Because the taking away, in this manner, the whole produce of the Sinking Fund has a tendency, as we apprehend, to the destruction of parliamentary credit and national faith, and is more dangerous in its consequences, as it is founded upon a doctrine newly laid down, 'that the proprietors of all the debts, subscribed to the South Sea Company, have no right to their principal money, but only to an annuity of four per cent.,' and if this opinion should be thought to be countenanced by Parliament in passing this Bill, we are apprehensive, that the effects of it may be too soon and severely felt, especially since the said proprietors have found by experience that they have been paid off when their annuities or stocks were above par; and the Sinking Fund is now diverted, when, as we apprehend, the said stocks and annuities are likely to fall considerably under par.

2ndly, Because we look upon this proceeding to be contrary to the contract understood to have been made between the public and those creditors who consented to the reduction of their interest, in confidence that their principal and remaining interest would thereby be better secured; in pursuance of which, an Act of Parliament was made in the third year of his late Majesty's reign, whereby it is enacted, 'That the monies to arise from time to time by certain surpluses, excesses, and overplus monies, therein specified (which are commonly called the Sinking Fund) shall be appropriated for discharging the principal and interest of such national debts and encumbrances as were incurred before the 25th day of December, 1716, and were declared to be national debts, and were provided for by Act of Parliament, in such manner and form as should be directed or appointed by any future Act or Acts of Parliament.' And the said Act of Parliament is confirmed by another Act made in the sixth year of his late Majesty, which, after reciting that the said overplus money will be greatly increased, as it was from the 24th of June, 1727, applies the said overplus monies as they stood appropriated by the former Act; and likewise establishes a contract between the public, and every individual creditor of the public that subscribed to the South Sea

Company, 'that the said subscribing creditors shall have a perpetual annuity of four per cent. from the year 1727, until they should be paid off;' and then applies the Sinking Fund, so increased, to pay such debts as were contracted before the 25th of December, 1716, and declared to be national debts, and provided for by Act of Parliament; which, if it is pursued, will be the most effectual means (as it is the strongest stipulation that can be made) for paying off the national debt: and these appropriations in the said Acts were manifestly made to prevent the application of the Sinking Fund to the current service of the year, or to the payment of debts incurred since the year 1716; which, like the present Navy Debt, may have lain dormant as long as they could possibly be concealed; and been occasioned by Ministers who may have run the nation into larger expenses every year than they thought for their interest to demand from Parliament. We apprehend the greater danger from this proceeding, by considering the steps which have been taken before it came to this point. At first some surpluses were distinguished out of the Sinking Fund; and supplies for the current service of the year raised upon them; then a sum of five hundred thousand pounds, being surpluses of the said Fund over the million which had been annually paid off, was applied last year in the same manner. Now the whole is taken at once, and we may justly suspect, that the next attempt will be to mortgage the Sinking Fund, the consequence of which will inevitably be, as we conceive, a total destruction of parliamentary credit, and introduce a necessity of taxing the Funds. The next step is more easy to be foreseen than proper to be expressed.

3rdly, Because the appropriating clause in this Act is, in effect, an unappropriation of all the money that has been raised this year, and puts it in the power of a Minister to divert any of the supplies to whatever purposes he shall think fit; and this in consequence only of an unprecedented message from the Crown, specifying neither the dangers apprehended nor the services proposed; whereas appropriating clauses were introduced to prevent the secret ill use of public money, and every tendency of breaking through them is a just foundation for parliamentary jealousy and inquiry; and therefore we apprehend, that we cannot answer it to the nation, if we should acquiesce when such innovations are attempted.

4thly, Because this new method of unappropriating money raised for particular uses frustrates and eludes the wisdom and caution of Parliaments, in the original grant of those monies, which is always in consequence of estimates laid before the other House, and for services specified, and this too at the beginning of the Session in a full House; whereas this unappropriating clause comes in not only at the end of the Session, but at the end of the Parliament, in a thin House, after many gentlemen were obliged to go to their respective countries, and the House may be apprehended to have consisted chiefly of such who had either no business in the country, or had particular reasons for not going there till this clause should be first passed and take effect.

5thly, Because this clause gives Ministers such a latitude to embezzle or misapply the public money, that we apprehend it to be of the most dangerous consequence; for the accounts, if any, given afterwards of the disposal of such sums, though impossible to be credited, may be impossible to be disproved. Domestic fortunes may be raised out of foreign subsidies, and the money asked for our defence, and granted for our safety, may be employed for our destruction. The vote of credit in the year 1726, and what was built upon it, cost the nation one million seven hundred and ninety-seven thousand seven hundred and thirty pounds, exclusive of the great increase of forces by sea and land that were granted by Parliament; four hundred and thirty-five thousand pounds were never accounted for to Parliament, and the rest was accounted for under the Articles of money paid to the Landgrave of Hesse, amounting to one million seventy-nine thousand seven hundred pounds; to the Crown of Sweden one hundred and fifty thousand pounds; to the Duke of Wolfenbuttel one hundred thousand pounds; to exchange to the Hessians ten thousand three hundred and thirty-five pounds; to exchange to Denmark twenty-two thousand six hundred and ninety-four pounds; and all this expense was incurred to guard against dangers, which the administration then gave out they apprehended from the exorbitant power of the House of Austria.

6thly, Because the money raised this year amounts to three million nine hundred and eighty thousand pounds; one million is raised by that expensive way of mortgaging the salt for eight years; the Sinking Fund, amounting to twelve hundred thousand

pounds, is taken, and everything done that can carry an appearance of easing the land this election year. But this Bill not only gives the Ministers a power over the whole supply raised this year, but, by this unprecedented device, lays a certain foundation of a greater load upon the land, which the nation may be reduced to pay off with interest next year. And we cannot omit this circumstance, that the money voted this year exceeds the supply to the amount of above one hundred thousand pounds.

7thly, Because we conceive this precedent to be the more dangerous at the end of a Parliament, and may be followed, fatally for our liberties, at the conclusion of future Parliaments ; for we have little reason to be sure, and as little to hope, that future Parliaments will be, like this, unbiassed, uncorrupt, uninfluenced, by the great number of employments they enjoy ; zealous assertors of the laws, liberties, and constitution of their country. And should there ever hereafter unfortunately be chosen a House of Commons, consisting of a set of men corrupted by a Minister, bartering the liberties of their country in the most flagitious manner, detested and despised by those they represent, they would probably, towards the end of their term, complete the measure of their iniquity, by lodging such a power in the hands of their corresponding Minister, as would enable him to choose them again in the succeeding Parliament, contrary to the intentions as well as interests of their true electors ; by which means corruption and tyranny would be entailed upon this nation, in the most dangerous manner, by the sanction of Parliament.

8thly, Because blending inconsistent matters of this nature, as we conceive, in a money-bill, lays this House under the utmost difficulties, since the delays occasioned by any alterations made in this House to some parts of a money-bill, may be unavoidable obstructions to other parts of it that require expedition and despatch.

9thly, Because the extending of this unprecedented power to the 24th of December next, is a length of time beyond what was ever known, as we apprehend, in any case ; and is, in our opinion, not only dangerous, but unnecessary ; for the chief pretence for the vote was, to have power during the interval of Parliament, which may be chosen and meet much sooner, if it shall be thought con-

venient, after so extensive a power is lodged in the hands of the Ministers for so long a term.

William Feilding, Earl of Denbigh.  
 William Craven, Lord Craven.  
 Sackville Tufton, Earl of Thanet.  
 John Leveson Gower, Lord Gower.  
 Thomas Wentworth, Earl of Strafford.  
 Hugh Fortescue, Lord Clinton.  
 Charles Spencer Churchill, Duke of Marlborough.  
 Robert Ker, Earl of Ker.  
 George Henry Lee, Earl of Lichfield.  
 Allen Bathurst, Lord Bathurst.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Samuel Masham, Lord Masham.  
 John Carteret, Lord Carteret.  
 James Graham, Duke of Montrose.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 William Coventry, Earl of Coventry.  
 James Compton, Earl of Northampton.  
 Thomas Thynne, Viscount Weymouth.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 John Hay, Marquis of Tweeddale.  
 John Dalrymple, Earl of Stair.

## CCXCIX.

FEBRUARY 28, 1735.

Parliament was prorogued on the 16th of April, 1734, and dissolved on the 17th of April, the writs being returnable on the 13th of June. The greater part of the elections were over early in May. The election of the Scotch Peers was held on the 4th of June, and it was stated that a Ministerial List was sent down, containing the names of Peers favourable to the Court, with a request for their election. The sixteen Peers elected in 1728 were the Dukes of Montrose and Roxburghe, the Marquis of Tweeddale, the Earls of Sutherland, Rothes (succeeded in 1732 by the Earl of Findlater), Buchan, Haddington, Loudoun, Selkirk, Aberdeen, Orkney, Stair, Bute, Hopetoun, Deloraine, and Ilay. The Ministerial List of 1734 was as follows: The Dukes of Athol and Buccleuch, the Marquis of Lothian, the Earls of Crawford, Sutherland, Morton, Loudoun, Findlater, Selkirk, Belcarres, Dunmore, Orkney, Portmore, Hopetoun, Ilay, and Lord Cathcart. A battalion of foot was drawn up in the court-yard of Holyrood, the election being held in the borough-room of Edinburgh, about a mile distant. Protests were drawn up on the occasion of the election by the Earl of Stair and others against the steps taken to secure the return of the Court candidates, who were elected by a great majority. The action of the Ministry was ascribed to the vengeance of

Walpole, as some of the rejected candidates had spoken and voted against him. On the 13th of February a petition was presented from the Dukes of Hamilton, Queensberry, and Montrose, and the Earls of Dundonald, Marchmont, and Stair against the return, alleging undue practices and praying to be heard. The petition was presented by the Duke of Bedford, and the question was postponed to the 21st of February, when it was debated at length, and on the 28th of February it was resolved, by 90 to 47, that the petitioners had not complied with the orders of the House of the 21st instant, which was that they should lay before the House particular proofs of the undue methods and illegal practices complained of.

Thereupon the following protest was inserted.

1st, Because it was agreed in the debate, conformable to the rules of reason, that no impossibility was required from the Lords petitioners; and though we allow that they have not literally complied with the order, yet, we think, the assertion in their answer, 'That it is impossible for them to inform the House who were the persons that in the course of the examination, and from the testimony of future witnesses, may appear to have been concerned,' was sufficient to satisfy the House that they have not wilfully disobeyed the order.

And from the nature of things, we conceive it impracticable for the Lords petitioners to name all the persons who may be concerned in these illegal proceedings; for although the offers of places, pensions, and other gratuities must be presumed to come from persons in power, yet such offers may be reasonably supposed to be conveyed by under agents; and we must also observe, that if those underhand agents should be publicly named before examination, they may either be prevailed upon to abscond, or to take the whole upon themselves, to screen offenders of a higher rank.

We must further declare it as our opinion, that such corrupt and dark designs, as are specified in the answer, may have been carried on with that secrecy and dexterity, that although a moral certainty may appear of their having been executed, the persons concerned in the execution may never be discovered; yet this good effect might have arisen from the inquiry, that the legislature would have found means to prevent such pernicious practices for the future. And even in that case, the Lords petitioners, by bringing this affair before the House, would have done a real service to the Peerage of Scotland, to this high Court of Judicature, and to the whole United Kingdom.

2ndly, Because we can no ways conceive, that the going on upon

this examination, without having the names of the persons produced, could be attended with any possible injustice to, or hardship upon those who might afterwards be named by the evidence. On the contrary, we are persuaded, that such persons would have an advantage which could not happen in any other course of proceeding, the whole matter of the accusation would lie open to them, the witnesses against them would be known, who could not afterwards be suffered to vary from their testimony, and the House would in justice allow such persons a full time to answer the accusation, and to bring up witnesses, if necessary, to prove their innocence. Neither is this to be looked upon as an accusation at present; for, as it was justly observed, there are no accusers, nor persons accused. But we apprehend it to be the most proper subject for a parliamentary inquiry that can possibly be brought before this House.

3rdly, However it may be necessary in the course of other proceedings, whether upon impeachments or appeals brought before this House, that all the persons concerned should be named, we can by no means think it necessary upon an inquiry, no final sentence being then to be given; and those rules which are consistent with justice in the former cases must, in our opinion, tend to obstruct all justice in the latter. We cannot conceive that an innocent person, who should happen to be named in the course of such examination, can possibly be deprived of the means of making his innocence appear; but we can well foresee, that guilty persons, and those probably of the highest rank, may escape by such a method, which imposing an impossibility on the informants, must, as we apprehend, tend to defeat all parliamentary inquiries; and therefore could not be, in our opinion, within the intention of the order.

4thly, Because the matters specified in the answer are of such a nature as seem only proper to be examined in this House; and had the Lords petitioners sought a remedy any where else, they might have been justly censured. We apprehend therefore, that the pinning them down to the precise words of the order may be attended with this fatal consequence, that all parliamentary inquiries may be rendered much more difficult hereafter; which may probably give such encouragement to corrupt Ministers, that they may be prompted to make the most dangerous attempts upon the constitution, and hope to come off with impunity. Such apprehensions naturally suggest the melancholy reflections, that our posterity

may see the time, when some of those Lords, who sit upon a more precarious foot than the rest of the House, having, through motives of virtue and honour, opposed the designs of some future Minister, for that, and for that alone, may be excluded at a ensuing election; and the whole world may be sensible of the cause of their exclusion, no remedy may be found, but their case may become a subject of national concern, indignation, and resentment.

Nicholas Lek, Earl of Scarsdale.  
 Thomas Wentworth, Earl of Strafford.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 George Henry Lee, Earl of Lichfield.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Henry Howard, Earl of Suffolk.  
 Charles Paulet, Duke of Bolton.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Montague Bertie, Earl of Abingdon.  
 Henry Somerset, Duke of Beaufort.  
 Theophilus Hastings, Earl of Huntingdon.  
 William Craven, Lord Craven.  
 William Feilding, Earl of Denbigh. •  
 George Booth, Earl of Warrington.  
 Sackville Tufton, Earl of Thanet.  
 Richard Temple, Viscount Cobham.  
 Samuel Masham, Lord Masham.  
 John Russell, Duke of Bedford.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Scroop Egerton, Duke of Bridgewater.  
 James Compton, Earl of Northampton.  
 William Coventry, Earl of Coventry.  
 William Graham, Earl Graham.  
 George Parker, Earl of Macclesfield.  
 Thomas Foley, Lord Foley.  
 Maurice Thompson, Lord Haversham.  
 Henry Bowes Howard, Earl of Berkshire.  
 Arthur Annesley, Earl of Anglesey.  
 Heneage Finch, Earl of Aylesford.  
 John Leveson Gower, Lord Gower.  
 Allen Bathurst, Lord Bathurst.<sup>1</sup>

<sup>1</sup> The Duke of Somerset, Viscount Tadcaster, and Lord Maynard prefix their names to the protest.

## CCC.

FEBRUARY 28, 1735.

It was then moved that the petition be rejected; the subject was debated, and the motion carried by 99 to 52. The following protest was thereupon inserted, the Duke of Somerset, Viscount Tadcaster, and Lord Maynard, prefixing as before their names to the document.

1st, Because that though the Lords petitioners have not literally complied with the order according to the sense of the House; yet they have laid before us facts that are of so criminal a nature in themselves, and so dangerous in their consequence to the nation in general, and to this House in particular, that we think a due regard to the safety of the one, and the honour of the other, require the strictest examination.

2ndly, For when we consider the first instance mentioned in the answer of the Lords petitioners, viz. 'That the list of sixteen Peers for Scotland had been framed by persons in high trust under the Crown, long previous to the election itself, and that this list was shown to Peers, as a list approved of by the Crown, and was called the King's List,' we are filled with indignation to see that great name indecently blended with the names of ministers, and profaned and prostituted to the worst purposes; purposes that must necessarily tend to the subversion of our constitution, which, we know, it is his Majesty's glory and desire to preserve. Such a criminal attempt to screen or facilitate a ministerial nomination, by the interposition (equally false and illegal) of his Majesty's name, calls, in our opinion, for the strictest enquiry, and the severest punishment upon the authors of the fact, if it be proved, or the assertors of it, if it be not; but is, in our opinion, no way to be dropped unexamined and unenquired into. Such a precedent may, in future times, encourage the worst of ministers to load with his guilt the best of princes; the borrowed name of his sovereign may at once become his weapon and his shield, and the constitution owe its danger, and he his defence, to the abuse of his prince's name, after a long abuse of his power.

3rdly, Because the following instances, viz.—

'That endeavours were used to engage Peers to vote for this list, by promise of pensions and offices civil and military to themselves and near relations, and by actual promise of sums of money.'

'That sums of money were actually given to or for the use of some Peers to engage them to concur in voting this list.

'That annual pensions were promised to be paid to Peers, if they concurred in the voting of this list, some of them to be on a regular establishment, and others to be paid without any establishment at all.

'That about the time of this election, numbers of pensions, offices, of which several were nominal, and releases of debts owing to the Crown were granted to Peers who concurred in voting this list, and to their near relations.'—

seem in the highest degree to affect the honour and dignity of this House, since untainted streams can hardly be expected to flow from a corrupted source. And if the election of sixteen Peers to represent the Peerage of Scotland should ever, by the foul arts of corruption, dwindle into ministerial nomination ; instead of persons of the first rank, greatest merit, and most considerable property, we may expect, in future Parliaments, to see such only returned, who, owing their election to the nomination of the minister, may purchase the continuance of their precarious seats by a fatal and unanimous submission to his dictates. Such persons can never be impartial judges of his conduct, should it ever be brought in judgment before this great tribunal.

4thly, Because the last instance mentioned, viz. 'That on the day of election, a battalion of his Majesty's forces was drawn up in the Abbey court at Edinburgh, and three companies of them were marched from Leith, a place at one mile's distance, to join the rest of the battalion, and kept under arms from nine in the morning till nine at night when the election was ended, contrary to custom at elections, and without any cause or occasion, that your petitioners could foresee, other than the over-awing of the election,' we apprehend to be of the highest consequence both to our liberties in general, and the freedom of elections in particular ; since whatever may have been the pretence, whatever apprehensions of disorders or tumults may have been alleged in this case, may be equally alleged on future occasions, especially as we have a number of regular forces, abundantly sufficient to answer such calls ; and we apprehend, that the employment assigned to this battalion will give great distrust and uneasiness to many of his Majesty's subjects, who will fear what use may be made of the rest of that very great number of men now kept up in this nation.

5thly, Because we conceive, that such a treatment given to a petition that contained an information of matters of so great importance, and signed by Peers of such great rank, honour, and veracity, must in future times discourage all informations of the like nature.

6thly, Though all Lords declared their desire of examining to the bottom of these important facts, and though we should acknowledge ourselves to be persuaded that it was their real intention, yet we much doubt, whether the world will judge with the same candour, and not rather impute this dismission of the petition to an unwillingness in this House to enquire into facts that are in their nature so injurious to the Crown, so destructive of the honour of Parliament, and so dangerous to the whole frame of our happy constitution.

William Graham, Earl **Graham**.  
John Russell, Duke of **Bedford**.  
Nicholas Leke, Earl of **Scarsdale**.  
Henry Bowes Howard, Earl of **Berkshire**.  
Anthony Ashley Cooper, Earl of **Shaftesbury**.  
Thomas Wentworth, Earl of **Strafford**.  
Thomas Foley, Lord **Foley**.  
Philip Dormer Stanhope, Earl of **Chesterfield**.  
Allen Bathurst, Lord **Bathurst**.  
George Henry Lee, Earl of **Lichfield**.  
Scoop Egerton, Duke of **Bridgwater**.  
Richard Temple, Viscount **Cobham**.  
Henry Somerset, Duke of **Beaufort**.  
Samuel Masham, Lord **Masham**.  
Charles Bruce, Lord **Bruce of Whorlton**.  
Montague Bertie, Earl of **Abingdon**.  
Charles Boyle, Lord **Boyle** (Earl of Orrery).  
Theophilus Hastings, Earl of **Huntingdon**.  
William Craven, Lord **Craven**.  
William Feilding, Earl of **Denbigh**.  
George Booth, Earl of **Warrington**.  
Henry Howard, Earl of **Suffolk**.  
Charles Paulet, Duke of **Bolton**.  
Sackville Tufton, Earl of **Thanet**.  
William Coventry, Earl of **Coventry**.  
James Compton, Earl of **Northampton**.  
Heneage Finch, Earl of **Aylesford**.  
George Parker, Earl of **Macclesfield**.  
Maurice Thompson, Lord **Haversham**.  
Arthur Annesley, Earl of **Anglesey**.  
John Leveson Gower, Lord **Gower**.

## CCCI.

FEBRUARY 28, 1735.

It was next proposed that a printed paper containing the protests of the Most Noble and Right Honourable the Peers of Scotland, and a written copy of the said protests, attested by witness as an authentic copy should be read. (The protests and the proceedings taken on the whole transaction are to be found in Parliamentary History, vol. ix, p. 607; Chandler's Debates, vol. iv, p. 431.) This motion, introduced by the Earl of Abingdon, was debated, and was met by a motion to adjourn, which latter motion was carried by 73 to 39. The following protest was thereupon inserted.—See Tindal.

Because we can by no means think it consistent with the honour of the House to adjourn without appointing a day, as was proposed, to consider of a matter allowed universally to be of the highest importance; and we have reason to apprehend that posterity, upon the perusal of the Journal of this day, may be induced to think, that this House was not inclined to permit the transactions of the late election in Scotland to be brought under examination in any shape whatsoever; the method proposed being, as we conceive, clear of all objections which were made in relation to the petition.

Henry Bowes Howard, Earl of Berkshire.  
 William Graham, Earl Graham.  
 Nicholas Leke, Earl of Scarsdale.  
 Thomas Foley, Lord Foley.  
 Maurice Thompson, Lord Haversham.  
 John Russell, Duke of Bedford.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 William Coventry, Earl of Coventry.  
 Scroop Egerton, Duke of Bridgwater.  
 Heneage Finch, Earl of Aylesford.  
 Thomas Wentworth, Earl of Strafford.  
 Montague Bertie, Earl of Abingdon.  
 George Booth, Earl of Warrington.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Richard Temple, Viscount Cobham.  
 George Henry Lee, Earl of Lichfield.  
 William Feilding, Earl of Denbigh.  
 Samuel Masham, Lord Masham.  
 Henry Somerset, Duke of Beaufort.  
 Charles Bruce, Lord Bruce of Whorlton.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Charles Paulet, Duke of Bolton.  
 Theophilus Hastings, Earl of Huntingdon.  
 Henry Howard, Earl of Suffolk.

Sackville Tufton, Earl of Thanet.  
William Craven, Lord Craven.  
James Compton, Earl of Northampton.  
Arthur Annesley, Earl of Anglesey.  
George Parker, Earl of Macclesfield.  
John Leveson Gower, Lord Gower.  
Allen Bathurst, Lord Bathurst.  
Henry Maynard, Lord Maynard.

## CCCII.

APRIL 16, 1735.

After the debate (on the 6th of March) on the application for papers and instructions relative to the Treaty of Seville, Lord Carteret moved that an address be presented to the King, with a view to learning the allotments of quarters which had been made for the forces of Great Britain since the 25th of March, 1734. This motion was agreed to without a division, and on the 20th of March the judges were ordered to prepare a Bill for regulating the quartering of soldiers during the time of elections. The Act received the royal assent on the 15th of May, and is numbered 8 George II, chapter 30. When it was brought up from Committee, an amendment had been made by the Committee to certain words in the first clause of the original Bill, and which are quoted in the following protest. The substituted words run as follows, 'And whereas it hath been the usage and practice to cause any regiment, troop, or company, or any number of soldiers which hath been quartered in any city, borough, town, or place, where any election of members to serve in Parliament hath been appointed to be made, to remove and continue out of the same during the time of such election, except in such particular cases as are hereinafter specified, to the end, therefore, that the said usage and practice may be settled and established for the future.' On a division, this amendment was carried by 61 to 33. The original Bill may be found in Parliamentary History, vol. ix, p. 883.

The following protest was inserted.

1st, Because we conceive these words, 'To the end, therefore, that the same may be safely transmitted to posterity, and for the avoiding any inconveniences that may arise thereunto from any regiment, troop, or company, or any number of soldiers which shall be quartered or billeted within any city, borough, town, or place, where any election of any member or members to serve in Parliament, or of the sixteen Peers to represent the Peerage of Scotland in Parliament, or of any of them, shall be appointed to be made,' extremely proper, in a Bill calculated to preserve to us and our posterity the enjoyment of our liberties, by securing the freedom of elections. Besides that, in our opinion, it seems very extraordinary

to leave out words that singly intimate our desire of transmitting to our posterity the liberties we enjoy ourselves.

2ndly, Because we cannot conceive that there was any weight in the argument urged for omitting those words, viz. ‘That they carried an imputation that some facts had been committed contrary to the freedom of elections,’ which this Bill was to prevent for the future; whereas, in our opinion, it is so much the contrary, that, we think, the leaving out those words, the natural import of which carry no imputation at all, may possibly be construed as a consciousness of some irregular use made of troops at elections, which, it might be apprehended, these words might point out, especially since reports of that nature have of late been spread, whether well grounded or not we do not take upon ourselves to determine.

Robert Ker, Earl of Ker.  
 William Feilding, Earl of Denbigh.  
 Hugh Fortescue, Lord Clinton.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Henry Bowes Howard, Earl of Berkshire.  
 Scroop Egerton, Duke of Bridgewater.  
 Richard Reynolds, Bishop of Lincoln.  
 Arthur Annesley, Earl of Anglesey.  
 William Craven, Lord Craven.  
 Charles Paulet, Duke of Bolton.  
 Heneage Finch, Earl of Aylesford.  
 John Leveson Gower, Lord Gower.  
 Theophilus Hastings, Earl of Huntingdon.  
 Thomas Foley, Lord Foley.  
 Sackville Tufton, Earl of Thanet.  
 Richard Temple, Viscount Cobham.  
 John Carteret, Lord Carteret.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 William Coventry, Earl of Coventry.  
 Maurice Thompson, Lord Haversham.  
 Henry Somerset, Duke of Beaufort.

## CCCIII.

APRIL 16, 1735.

In the original Bill it was proposed to indict, and on conviction cashier, any officer or soldier who should refuse or neglect to remove

out of places at the time of election. The Committee omitted this clause, and substituted another, subjecting the Secretary at War or any person officiating as such to the penalties of the Act. The amendment was carried by 64 to 33, and the following protest was inserted.

1st, Because we conceive, that the leaving out this clause is, in reality, defeating the effect and intention of the whole Bill; a Bill thought so necessary by the whole House, that the learned judges were unanimously ordered to prepare and bring it in, in lieu of a clause, to the same purpose, offered to be inserted in the annual Act to prevent mutiny and desertion.

2ndly, Because we think it much more necessary, that officers and soldiers should be subject to be tried by the civil power for an offence of this high nature against the constitution in general, than for quartering a man contrary to the method prescribed by the Act to prevent mutiny and desertion, for which crime they are at present liable to be tried and cashiered by the civil magistrate.

3rdly, Because we conceive that this offence, being an offence of the highest nature against the civil Government, is properly cognizable by the civil magistrate only, and most improperly referred to the determination of a Court-Martial. Offences against military discipline are justly reserved for the decision of a Court-Martial, as consisting of persons of the same profession, and consequently the properest judges; and by a parity of reasoning, we conceive, the civil magistrate is the fittest judge of civil offences. We cannot therefore but fear, that a Court-Martial may consist of persons who may be at least ignorant, and possibly hasty and partial judges of the merits of an election.

4thly, Because the intention of this Bill being to prevent any insults from troops during the time of elections, we should provide against all possible dangers; and though, during his Majesty's reign, we apprehend no ill use will be made of the troops, yet, in future times, ministers may prevail, whose unpopular and detested administration may leave them no hopes of security from a free elected Parliament, and reduce them to violent and illegal methods of employing those troops, kept up by the corruption of one Parliament, in the forcible election, or rather the nomination of another. In which case no remedy can be hoped for against officers so offending, since, as the Act now

stands, they can only be tried by a Court-Martial, and a Court-Martial can only be appointed by the Crown; and consequently the same wicked minister, who may hereafter advise such an attempt upon our constitution, will not be likely to permit his guilty agents to suffer, but the merit of their crime will carry impunity along with it.

5thly, Because we cannot conceive, that the arguments drawn from the possibility of a riot at an election, or of a rebellion or invasion during the time of elections, wherein the assistance of the military power may be necessary, were in any degree sufficient to induce the House to leave out this clause; since in the case of a riot, the civil magistrate is already armed with a rigorous penal law, known by the name of the Riot Act; and in the case of a rebellion or invasion, it is well known that this and all other laws would be silent. But, on the other hand, we apprehend, great inconveniences may arise, if troops have liberty to march into towns, during the time of elections, at the requisition of a partial or corrupted civil magistrate, who may call a majority he dislikes a tumult, and supply with force the want of interest of an unknown and unqualified candidate; by which means the voice of the people may be drowned in the noise of arms.

6thly, Because we apprehend, that a very injurious and dangerous construction may, by malicious people (too speciously) be put upon the leaving out of this clause: that although the unpopularity of rejecting the Bill itself could not be withheld, yet the eluding and enervating the efficacy of it had been indirectly brought about. Which supposition, however groundless, may give great uneasiness and apprehensions to many of his Majesty's good subjects, and bring very great unpopularity upon the administration: an evil, by all possible means to be prevented, since hate begets hate; and an administration once become unpopular soon becomes desperate, and may endeavour to strengthen their crazy and rotten foundation, by tearing away, for their own use, the corner stones of the liberties of the people.

William Feilding, Earl of Denbigh.

Daniel Finch, Earl of Winchilsea and Nottingham.

William Craven, Lord Craven.

Charles Boyle, Lord Boyle (Earl of Orrery).

Henry Bowes Howard, Earl of Berkshire.

Robert Ker, Earl of Ker.

Heneage Finch, Earl of Aylesford.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Theophilus Hastings, Earl of Huntingdon.  
 George Henry Lee, Earl of Lichfield.  
 Richard Temple, Viscount Cobham.  
 Hugh Fortescue, Lord Clinton.  
 William Coventry, Earl of Coventry.  
 Scroop Egerton, Duke of Bridgwater.  
 Charles Paulet, Duke of Bolton.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 Richard Reynolds, Bishop of Lincoln.  
 Sackville Tufton, Earl of Thanet.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Henry Somerset, Duke of Beaufort.  
 John Carteret, Lord Carteret.  
 Maurice Thompson, Lord Haversham.

We dissent for all the above-mentioned reasons, except the third.

Arthur Annesley, Earl of Anglesey.  
 John Leveson Gower, Lord Gower.  
 Thomas Foley, Lord Foley.

#### CCCIV.

MAY 9, 1735.

On the 12th of March, the provost of Hadlington petitioned the House of Commons to the effect, that he and several others had been imprisoned by Andrew Fletcher of Miltoun, one of the Scotch judges, arbitrarily and illegally. Walpole opposed referring the petition to a committee of the whole House, and carried his point by 197 to 155. Upon this the minority moved the reading of an Act of the Scotch Parliament of 1701, entitled 'an Act for preventing wrongous imprisonments, and against undue delays in trials,' and thereafter brought in an Act for explaining and amending that Act. Walpole opposed the title of the Bill, and proposed another which was lost by 215 to 147. On this Dundas, Lord Polwarth, and Mr. Sandys (the first of whom had been lord advocate, but who had joined the malcontents after the Duke of Argyll was dissatisfied with Walpole), brought in and carried their Bill. When introduced into the Lords, it was rejected on a motion of commitment by 68 to 28, through the influence of the Earl of Ilay. It will be observed that none of the Scotch Lords sign the subjoined protest.

1st, Because we apprehend a Bill of this nature, sent up from the House of Commons ought, at least, to have undergone the form of a commitment, since whatever was unnecessary or wrong

in it might there have been left out or amended; but several matters contained in the Bill seem to us highly expedient to be passed into a law; for by the law of Scotland, as it now stands, any judge may, by a summary warrant, commit persons upon information signed, without any oath made, and without convening the parties before him, or hearing what they can allege in their own justification, and send them to a remote prison in any corner of the Kingdom. No express words in any statute do at present forbid such a practice; and we have great reason to believe, that some abuse of this unlimited power did appear before the House of Commons, which might probably give the first rise to the Bill.

2ndly, Because, as the Habeas Corpus Act is the great security of the liberties of this part of the United Kingdom, it would be, in our opinion, both unsafe and ungenerous not to extend the same liberty to the other; for should they, who have hitherto been brave assertors of their liberties, find themselves exposed to oppressions from which the rest of their fellow-subjects are secured by law, necessity may prompt them to attempt by violence to free themselves, or revenge provoke them to become the instruments of power, and bring us under the same dependence; and the history of late times sufficiently convinces us, that in those reigns, when arbitrary power was designed and attempted in this Kingdom, desperate and adventurous agents were sent first to try the experiment in Scotland.

3rdly, Because there was no provision in the Bill to prevent an abuse of seizing persons on pretence of debt, and detaining them till the elections were over, where they had a right to vote. The protection granted by the Bill was no more than what every common court of justice actually allows to any evidence whose presence may be necessary in matters of much less consequence; and we cannot help testifying our surprise, that this regulation has not already been made over the whole united Kingdom; we hope, however, another Session will not pass without taking effectual care to prevent such a dangerous abuse of law.

4thly, Because experience has shown us the benefits which arose from<sup>1</sup> delivering the subjects of that part of the Kingdom from their vassalage, and freeing them from a servile dependence

<sup>1</sup> The original is 'for,' probably a clerical error for 'from.'

on their superiors; and as, we conceive, the purport of this Bill was nothing more than a natural extension of the same measure. It would have been the most probable, if not the only method to eradicate any remaining disaffection, though we have no ground to suppose, from any late transactions, that there is any such; on the contrary, those who were thought the most disaffected have lately appeared sufficiently tractable. But what dissatisfaction the rejecting such a Bill may create, even amongst the best subjects, and those who have always been most attached to the present establishment, we cannot reflect upon without concern; for as the Union was made in support of the present Establishment, which is founded upon the Revolution, and the Revolution upon principles of liberty, they who have always asserted those principles may, as we apprehend, justly complain, that the liberty of the subject is not equally secured in every part of the United Kingdom.

5thly, Because we are apprehensive it will appear very extraordinary to the world, that a Bill for the security of the liberty of the subject should have been thrown out of this House without a commitment, when so many Bills have passed for laying on, or continuing severe and heavy duties upon them. Remote apprehensions, dangers barely possible, and suspicions of disaffection, have been arguments formerly made use of on the side of the Crown, for enacting the severest penal laws upon the subject; and we conceive it still more incumbent on the legislature to be watchful over the liberties of the people committed to their care, since it is much easier to restrain liberty from running into licentiousness, than power from swelling into tyranny and oppression.

6thly, Because liberty being the common birthright of all mankind, and still preserved to this nation by the wisdom and courage of our ancestors, we think an infringement of that right, though but for an hour, by wrongful imprisonment, is not only an injury to the person immediately concerned, but a notorious invasion of the constitution. We should not deserve those liberties ourselves, if we did not take the most effectual methods to transmit them in their full extent to latest posterity, and to restrain by proper laws any flagitious attempts of ministers, prompted by ambition or drove by despair, who may at any time hereafter

endeavour to undermine or attack them. Humanity and generosity particularly call upon us, who are distinguished by many privileges and advantages peculiar to ourselves, to secure to the people that liberty which they have an equal right to with us; a blessing the meanest subject of this Kingdom ought ever to enjoy in common with the greatest.

Philip Dormer Stanhope, Earl of Chesterfield.  
 Thomas Windsor, Lord Montjoy (Viscount Windsor).  
 William Coventry, Earl of Coventry.  
 John Leveson Gower, Lord Gower.  
 Henry Howard, Earl of Suffolk.  
 Maurice Thompson, Lord Haversham.  
 George Henry Lee, Earl of Lichfield.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Richard Temple, Viscount Cobham.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Allen Bathurst, Lord Bathurst.  
 Thomas Foley, Lord Foley.  
 Thomas Wentworth, Earl of Strafford.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Sackville Tufton, Earl of Thanet.  
 James Compton, Earl of Northampton.  
 Henry Bowes Howard, Earl of Berkshire.

## CCCV.

MAY 19, 1736.

The Act, 9 George II, cap. 35, was entitled, 'An Act for indemnifying persons who have been guilty of offences against' the laws made for securing the revenues of customs and excise, and for enforcing those laws for the future.' It originated in the Commons, and received the royal assent on the 20th of May. The clause to which exception is taken in the subjoined protest is the tenth of the Act. The body of the Act contains restraints and penalties on smugglers. The debate on the Act in the Commons may be found in Parliamentary History, vol. ix, p. 1225; that in the Lords in Parliamentary History, vol. ix, p. 1229. It appears that the stringency of the clauses was due to a desire to compensate the Crown for the probable loss of revenue anticipated from the operation of the Gin Act, in consideration of which the Civil List had been increased by £70,000 a year, and which for various reasons was from the first unpopular, and was finally found to be nugatory. The Lords referred to in the third reason of the protest must be the Chancellor Lord Talbot, and the Chief Justice Lord Hardwicke, as no other law-lords were in the House at the time. The third reading was carried by 54 to 46.

1st, Because some parts of this Bill are so repugnant to the laws and constitution of this Kingdom, as we apprehend, that

we could not, consistently with the rules of reason and justice, concur in the passing of it, the substance of one clause in this Bill being to this effect, viz. ‘That upon information before a Justice of Peace, that any persons, to the number of three or more, who are, or have been, after the 24th day of June, 1736, armed with fire-arms, or other offensive weapons, with intent to run goods, such Justice shall, and may, grant a warrant to a constable to apprehend such persons; and if such Justice finds cause, upon examination, he shall, and may, commit them to the next county jail, there to remain, without bail or mainprize, until discharged by due course of law; or, upon conviction, they are to be adjudged guilty of felony.’ Now as this Bill is to create a new kind of felony, without limitation of time or place, upon principles unknown to our law, we cannot but think it should be made so plain and clear, that the Judges in Westminster Hall might determine upon it without doubts or difficulties; but we conceive, as this Bill stands, many doubts may arise as to the construction of it.

2ndly, Because we do not know of any one Act in the Statute Book, whereby it is put in the power of a single Justice of the Peace to commit persons without bail or mainprize, upon a bare information of an intention, without any proof. And although the House found it necessary to repeal so much of the clause aforesaid as allows the Justices to commit without bail or mainprize, by adding a rider to empower the Court of King’s Bench to grant bail to persons so committed, we cannot be of opinion, that the objections to the Bill were removed, since the power of imprisonment still remains in the hands of a single Justice of the Peace, upon a bare information of an intention to run goods, without any other overt act to prove that intention than what may be a common and innocent circumstance, viz. ‘the riding three or more in company with usual arms,’ and no limitation fixed either for time or place.

3rdly, Because this Bill was altered in the Committee by the unanimous consent of all the Lords present, and those alterations were disagreed to upon the report, without sufficient ground, as we conceive; and as two noble and learned Lords, who preside in the two greatest Courts of the Kingdom, shewed, by the strongest arguments, that the Bill, as it now stands, may be dangerous to the liberties of our fellow-subjects, we could not

agree to the passing of it, however expedient or necessary it may be supposed in other respects; being fully persuaded it would have been better to have left this matter to the laws now in being (already very severe) and to the consideration of a future Session of Parliament, than to constitute a precedent of such dangerous consequence, and to enact a law which, as we fear, may be attended with perpetual grievances, injustice, and oppression.

Thomas Foley, Lord **Foley**.  
 Anthony Ashley Cooper, Earl of **Shaftesbury**.  
 Sackville Tufton, Earl of **Thanet**.  
 George Booth, Earl of **Warrington**.  
 Edward Harley, Earl of **Oxford and Mortimer**.  
 Thomas Thynne, Viscount **Weymouth**.  
 Thomas Wentworth, Earl of **Strafford**.  
 Thomas Windsor, Lord **Montjoy** (Viscount Windsor).  
 Henry Somerset, Duke of **Beaufort**.  
 George Henry Lee, Earl of **Lichfield**.  
 Allen Bathurst, Lord **Bathurst**.  
 Charles Paulet, Duke of **Bolton**.  
 William Coventry, Earl of **Coventry**.  
 Richard Temple, Viscount **Cobham**.  
 Daniel Finch, Earl of **Winchilsea and Nottingham**.  
 James Compton, Earl of **Northampton**.

## CCCVI.

FEBRUARY 25, 1737.

The Prince of Wales, Frederic, was married in April 1736 to the Princess Augusta of Saxe-Gotha, and his friends began to complain that his income was too small for his station. George II, when Prince of Wales, had £100,000 a year out of a civil list of £700,000, and Frederic had only £50,000 out of £800,000. George II, however, declined to give his son more than £50,000, which with £10,000 from the Duchy of Cornwall, was, he asserted, as much as the Prince needed, or he could afford. Bolingbroke had advised the Prince just before he left England to apply to Parliament for £100,000, and though many of the Prince's friends dissuaded him from the step, at which the King was exceedingly angry, the Opposition moved on the 22nd of February an address, begging the King to make a settlement to this amount. It was resisted by Walpole, who carried his own proposal by 234 to 204, forty-five Jacobites leaving the House.—See on the whole subject, Stanhope's History, chap. xvii; Dodington's Diary; Hervey's Memoirs; Coxe's Walpole. On the 25th of February, a similar motion was made in the Lords by Lord Carteret, but was rejected by 103 to 40. For the debates in both Houses, see Parliamentary History, vol. ix, p. 135<sup>2</sup>.

The following protest was inserted.

1st, Because that this House has an undoubted right to offer, in an humble address to his Majesty, their sense upon all subjects in which this House shall conceive that the honour and interest of the nation are concerned.

2ndly, Because the honour and interest of the Nation, Crown, and Royal Family can be concerned in nothing more, than in having a due and independent provision made for the first-born son and heir apparent of the Crown.

3rdly, Because in the late King's reign one hundred thousand pounds a year, clear of all deductions whatsoever, was settled upon his present Majesty, when Prince of Wales, out of a civil list not exceeding seven hundred thousand pounds a year.

4thly, Because his present Majesty has granted to him, by Parliament, several funds to compose a civil list of eight hundred thousand pounds a year, which, we have very good reason to believe, bring in at least nine hundred thousand pounds, and are more likely to increase than to diminish.

5thly, Because out of this extraordinary and growing civil list, we humbly conceive, his Majesty may be able to make an honourable provision for the rest of his royal family, without any necessity of lessening that revenue which, in his own case when he was Prince of Wales, the wisdom of Parliament adjudged to be a proper maintenance for the first-born son and heir apparent of the Crown.

6thly, Because it is the undoubted right of Parliament to explain the intention of their own Acts, and to offer their advice in pursuance thereof; and though in the inferior courts of Westminster Hall the Judges can only consider an Act of Parliament according to the letter and express words of the Act, the Parliament itself may proceed in a higher way, by declaring what was their sense in passing it, and on what grounds; especially in a matter recent and within the memory of many in the House, as well as out of it.

7thly, Because there were many obvious and good reasons why the sum of one hundred thousand pounds per annum for the Prince was not specified in the Act passed at that time, particularly his being a minor and unmarried. But we do apprehend, that it is obvious that the Parliament would not have granted to his Majesty so great a revenue above that of the late King, but with an intention that one hundred thousand pounds a year should at a proper time be settled on the Prince, in the same manner as it was

enjoyed by his royal father, when he was Prince of Wales. And his Royal Highness being now thirty years old, and most happily married, we apprehend it can no longer be delayed, without prejudice to the honour of the family, the right of the Prince, and intention of the Parliament. And as in many cases the Crown is known to stand as trustee for the public, upon grants in Parliament; so we humbly conceive, that in this case, according to the intention of Parliament, the Crown stands as trustee for the Prince, for the aforesaid sum.

8thly, Because we do conceive, that the present Princess of Wales ought to have the like jointure that her present Majesty had when she was Princess of Wales, and that it would be for the honour of the Crown, that no distinction whatever should be made between persons of equal rank and dignity.

9thly, Because we apprehend, that it has always been the policy of this country, and care of Parliament, that a suitable provision, independent of the Crown, should be made for the heir apparent, that by shewing him early the ease and dignity of independence, he may learn by his own experience, how a great and free people should be governed.

And as we are convinced in our consciences, that if this question had been passed in the affirmative, it would have prevented all future uneasiness that may unhappily arise upon this subject, by removing the cause of such uneasiness, and giving his Royal Highness what we apprehend to be his right; we make use of the privileges inherent in members of this House, to clear ourselves to all posterity, from being concerned in laying it aside.

Lastly, We thought it more incumbent upon us to insist upon this motion, for the sake of this royal family, under which alone we are fully convinced we can live free, and under this royal family we are fully determined we will live free.

John Russell, Duke of Bedford.  
Charles Spencer Churchill, Duke of Marlborough.  
Daniel Finch, Earl of Winchilsea and Nottingham.  
Henry Bowes Howard, Earl of Berkshire.  
John Carteret, Lord Carteret.  
Thomas Thynne, Viscount Weymouth.  
Richard Temple, Viscount Cobham.  
Scroop Egerton, Duke of Bridgewater.  
Allen Bathurst, Lord Bathurst.

Robert Ker, Earl of Ker.  
 Henry Howard, Earl of Suffolk.  
 George Brudenell, Earl of Cardigan.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 William Coventry, Earl of Coventry.

## CCCVII.

MARCH 1, 1739.

The relations between Great Britain and Spain had been formally defined by the Treaty of Seville (1729) under which the commercial intercourse between Great Britain and the Spanish colonies in America was regulated. The South Sea Company was entitled to send an annual ship to trade with these colonies. But it was alleged that this ship was waited on by other ships, that these supplied it with fresh goods when the original cargo was sold, and that smuggling in Spanish harbours was extensively practised by other vessels. These practices led to the establishment of a rigorous police by the Guardia Costas, the Spanish preventive force, and it was alleged that great cruelties were practised on such British sailors and merchants as infringed, or appeared to infringe, the Spanish revenue laws. It was at this time that the story of Jenkins' ears was circulated. The conduct of the Government was severely criticised by the Opposition during the Session of 1738, but unsuccessfully. (See Parliamentary History, vol. x, p. 562; Coxe's Walpole.) In the autumn, however, Walpole entered into negotiations with the Spanish Court, with a view to the maintenance of peace, and in consequence the Convention of Pardo (Almond's Treaties, vol. ii, p. 38) was signed on the 14th of January, 1739. The document was laid before both Houses at the commencement of the Session of 1739, and a debate was thereupon taken; that in the Commons on the 6th of February, and that in the Lords on the 8th of February. In the Lower House the Government had a large majority, in the Upper only a small one. The debate was renewed in both Houses on the 23rd of February; that in the Commons being particularly acrimonious, and the Ministry carrying the day by only 19 votes. The Lords again debated the subject on the 1st of March, the principal speakers against the Convention being Lords Carteret and Bathurst, the Earl of Chesterfield, and the Duke of Argyll.—See Parliamentary History, vol. x, p. 1091; Stanhope's History, chap. xx. The address was carried by 95 to 74.

The following protest was inserted.

1st, Because we conceive that this resolution, under the plausible pretence of a respectful address to the Throne, carries with it an approbation of the Convention concluded at the Pardo on the 14th of January last, which, as we apprehend, may be a most fatal compliment, if it should induce his Majesty to believe, that this Convention is agreeable to the sense and expectation of the nation.

2ndly, Because this resolution hath rather weakened than enforced the address of last year, having omitted that part of the said address which declares, 'that no goods, being carried from one part of his Majesty's dominions to another, are to be deemed contraband and prohibited goods; and that the searching of ships, under pretence of their carrying contraband or prohibited goods, is a violation and infraction of the treaties subsisting between the two crowns.'

3rdly, We think the said resolution doth not sufficiently assert our right, by saying only, 'that we shall not be liable to be stopped, searched, or visited upon the open seas,' the merchants having proved, at the Bar of the House, that currents and winds unavoidably drive ships out of their course, and that observations of landmarks, upon the Spanish coast, are absolutely necessary for their steering a safe course through those seas, we apprehend that their being employed to keep a direct course, without coming near the Spanish coast, as lately insisted upon by the Spaniards, would render them sole judges of our navigation; and their being permitted to visit or search our ships within any limits whatsoever, would render our whole American trade precarious and impracticable.

4thly, Because we see no reason to believe, that the future negotiation of the plenipotentiaries will, in the next eight months, obtain the admission of those rights insisted upon in our former address, which the instances and representations made to the Court of Spain last year, supported by the resolution of Parliament and a powerful fleet, have not been able as yet to procure.

5thly, Because we apprehend the Spaniards do not think themselves bound by this Convention to abstain from their unjust methods of proceeding; since it is proved at the Bar of the House, that Captain Vaughan, a commander of a British ship, having been unjustly taken by a Spanish man-of-war, his ship confiscated, and he imprisoned at Cadiz, was, at the time of signing the Convention, detained in prison there, and not released in several weeks after, notwithstanding the representation of the British plenipotentiary at the Court of Spain.

6thly, Because we conceive, that the reparation pretended to be made to our merchants by this Convention, for the grievous losses they have sustained during a course of many years, is insufficient.

The dark accounts of this transaction laid before us, have not been fully explained, nor any satisfactory reasons given us why their demands, stated in an account signed the 14th of June, 1738, by Mr. Stert, one of the commissioners, at £343,277 should be so greatly reduced.

7thly, Because, as we apprehend, we are to allow £60,000 to the King of Spain, chiefly on account of the ships taken near Sicily in the year 1718; though it hath appeared to the House, from the instructions given to the commissioners after the Treaty of Seville, signed by his Majesty, now lying before us, that the articles of the treaty concluded at Madrid in 1721, upon which that claim of the Spaniards is founded, had been fully executed on the part of the Crown of Great Britain.

8thly, Because the referring the limits of Florida and Carolina to the plenipotentiaries, seems to call in question our right to possessions, which we have so long uninterruptedly enjoyed, seven eighth-parts, or shares, of which, the nation at a considerable expense, hath, not long since, purchased of the proprietors under the two original grants of King Charles II, a certain district whereof, called Georgia, in honour to his present Majesty, hath been erected into a new colony, and granted to trustees for laudable purposes; for the establishment and improvement of which, considerable sums have been granted by the public: and moreover, it being stipulated by the present Convention, 'that no fortification there shall be increased' during the term of eight months, we apprehend, that the regiment lately raised for the defence of that colony, and also the engineers and stores, which, at a considerable increase of the public expense, have been sent thither, will not only remain useless, but, if a peace should not be procured within that period, will, at the end of it, be exposed, together with the colonies, to the violence and irruption of the Spaniards.

9thly, Because we apprehend the British Minister's acceptance of the declaration signed by M. de la Quadra, the 10th of January, 1738-9, said to be agreed with reciprocal accord, hath allowed his Catholic Majesty to reserve to himself, in its full force, the right of being able to suspend the assiento of negroes, in case the South Sea Company doth not subject herself to pay, within a short time, the sum of £68,000, pretended to be owing on the duties of negroes, and profits of the ship Carolina, though that sum was

never otherwise acknowledged to be due, than as part of a plan of accommodation, wherein a much larger sum was admitted to be due to the said Company, whereby we apprehend the King of Spain may think that great Company is put out of the protection of his Majesty, as to this point, and left to his own mercy and equity; whereas, if the Convention, as it now stands, had been signed without the acceptance of the declaration, the King of Spain would have had no pretence, as we conceive, to suspend the assiento; and therefore we apprehend, that the said declaration will be looked upon as a defiance of the said treaty, as far as it relates to the South Sea Company, which appears to us a dishonourable collusion, hurtful to public credit.

10thly, Because we do not find any satisfaction has been obtained by the Convention, for the frequent cruelties and barbarities exercised on the British sailors, nor for the many insults offered to the British flag; which we are apprehensive may be thought an insensibility of the sufferings of a body of men, highly useful to the trade, and necessary to the defence of these Kingdoms, and a great neglect of the honour of the nation.

Hugh Fortescue, Lord Clinton.  
Sackville Tufton, Earl of Thanet.  
William Graham, Earl Graham.  
Thomas Foley, Lord Foley.  
Baptist Noel, Earl of Gainsborough.  
Charles Bruce, Lord Bruce of Whorlton.  
Theophilus Hastings, Earl of Huntingdon.  
Richard Boyle, Earl of Burlington.  
Henry Somerset, Duke of Beaufort.  
Maurice Thompson, Lord Haversham.  
Philip Dormer Stanhope, Earl of Chesterfield.  
Richard Temple, Viscount Cobham.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Herbert Windsor, Lord Montjoy (Viscount Windsor).  
Montague Bertie, Earl of Abingdon.  
George Henry Lee, Earl of Lichfield.  
George Parker, Earl of Macclesfield.  
Samuel Masham, Lord Masham.  
John Leveson Gower, Lord Gower.  
Philip Stanhope, Earl Stanhope.  
Thomas Wentworth, Earl of Strafford.  
Henry Howard, Earl of Suffolk.  
James Compton, Earl of Northampton.  
John Fane, Earl of Westmorland.  
Henry Maynard, Lord Maynard.

Edward Bligh, Lord Clifton (Earl of Darnley).  
 Allen Bathurst, Lord Bathurst.  
 Robert Ker, Earl of Ker.  
 William Coventry, Earl of Coventry.  
 Richard Reynolds, Bishop of Lincoln.  
 John Boyle, Lord Boyle (Earl of Orrery).  
 Heneage Finch, Earl of Aylesford.  
 John Campbell, Duke of Greenwich (Duke of Argyll).  
 John Hervey, Earl of Bristol.  
 John Carteret, Lord Carteret.  
 Robert Raymond, Lord Raymond.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Scroop Egerton, Duke of Bridgewater.  
 William Talbot, Lord Talbot.  
 Robert Harley, Earl of Oxford and Mortimer.

## CCCVIII.

JUNE 4, 1739.

The Spanish Government admitted an indebtedness to the British merchants for damages sustained by them to the amount of £200,000. Against this they set off a claim of £60,000 for ships taken by Byng in 1718. This sum of £140,000 was further reduced by an allowance of £45,000 for prompt payment, thus reducing the sum due to £95,000. Even this amount, as matters were tending to a breach (war was actually declared on the 19th of October) was unpaid at the period stipulated in the Convention of Pardo, i. e. within four months of the treaty being signed. A debate was therefore taken on the subject in the Lords, and it was moved, 'that the non-payment of the £95,000 is a manifest infraction on the part of Spain of a Convention lately concluded between the two crowns, a high indignity to his Majesty, and an injustice to the nation.' The debate was opened by Lord Carteret, and the motion was negatived by 63 to 44.

The following protest was entered.

Because we think the main question should have been put, and passed in the affirmative, since every Lord who spoke in the debate agreed that it was strictly true; and we do not apprehend the least inconvenience would possibly have arisen from it. But on the contrary, we conceive that the stating of the fact of the manifest infraction of the Convention was a necessary foundation for the subsequent advice of this House to his Majesty, which advice we think the more necessary, since we are convinced, by the experience of many years, that the councils of the Administration, far from proving any reparation or satisfaction for the insults and injuries this nation has received, have only exposed it to further dishonour and contempt.

Philip Dormer Stanhope, Earl of Chesterfield.  
 Herbert Windsor, Lord Montjoy (Viscount Windsor).  
 John Carteret, Lord Carteret.  
 Heneage Finch, Earl of Aylesford.  
 Henry Howard, Earl of Suffolk.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Thomas Foley, Lord Foley.  
 James Compton, Earl of Northampton.  
 Samuel Masham, Lord Masham.  
 John Leveson Gower, Lord Gower.  
 Richard Temple, Viscount Cobham.  
 Allen Bathurst, Lord Bathurst.  
 William Coventry, Earl of Coventry.  
 John Fane, Earl of Westmorland.  
 George Henry Lee, Earl of Lichfield.  
 Charles Boyle, Lord Boyle (Earl of Orrery).  
 Thomas Wentworth, Earl of Strafford.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Philip Stanhope, Earl Stanhope.

## CCCIX.

NOVEMBER 18, 1740.

The Speech from the Throne alluded to the activity with which the war with Spain was being carried on, congratulated the nation on the success which had hitherto attended the British arms, referred to the death of the Emperor of Germany, and declared that the Crown was taking all measures of precaution in the event of unforeseen contingencies. The Speech was barely uttered when the Duke of Argyll rose, and proposed that an address should be made to the Crown, which should not be a mere echo of the Speech from the Throne, but a statement of the opinions entertained by the House of Lords on further questions. The purpose of this action on the part of the Duke of Argyll was to strike at Walpole. (The Duke had been deprived of all his employments in the spring of 1740.) The address which the Duke proposed contained two clauses, one congratulating the King on his safe return, and assuring him of the loyalty with which the House was prepared to support his purposes ; the second affirming the willingness of the Peers, in their capacity of Hereditary Great Council of the nation, to further the true interests of the King and the Country. The first of these clauses was proposed, and negatived by 66 to 38.

On this the following protest was inserted.

1st, Because we conceive, that a motion of this nature ought not to have been laid aside by the previous question ; but we apprehend it would have been more consistent with the honour and dignity of this House to have passed it in the affirmative, since it contained the strongest assurances of our duty to his Majesty, and

of our zeal to support him with our lives and fortunes in the prosecution of this just and necessary war. Moreover, it had been universally allowed in the debate, that the ancient usage of this House was to return immediately a general address of thanks only for the Speech from the Throne, and to appoint a future day for taking the said Speech into consideration. By which wise method of proceeding, this House had an opportunity of forming their judgment and offering their advice to the Crown, upon the several matters contained in the Speech after due enquiry and mature deliberation.

2ndly, Because, though the Speech from the Throne is in Parliament justly considered as the act of the ministers, yet a motion pre-concerted, if not drawn by themselves, echoing back the particulars of the Speech, is, as we conceive, a modern expedient to procure a precipitate approbation of measures which might not be approved upon better consideration. It was indeed alleged in the debate, in support of this practice, that it was introduced during the late war, in the administration of the Earl of Godolphin; but we should also consider the reason of it (we heartily wish we had now the same) that the zeal of the House was then every year animated by the glorious successes of the Queen's arms under the command of the Duke of Marlborough. And though it is always admitted that these hasty addresses do not preclude the House from future enquiries or censures; yet, should censures, in consequence of such enquiries, become necessary, they would produce an inconsistency between the first address and the subsequent resolutions, and argue a levity highly unbecoming the wisdom and dignity of this House.

3rdly, Because one part of this motion, the congratulation upon his Majesty's safe return to his regal dominions, could be liable to no objection, but seemed at this time peculiarly seasonable, since it was evident to the whole Kingdom, the sailing of the fleet, which had been delayed so long, was the immediate effect of his happy return.

4thly, Because we conceive, that our assuring his Majesty that we would exert ourselves in our high capacity of Hereditary Great Council of the Crown, would have given encouragement to his allies, confidence to his armies, and satisfaction to his subjects, especially in this critical conjuncture, wherein the advice of this

House is more than ever necessary, since by the inaction of this last year in all parts (except wherein Admiral Vernon commanded), notwithstanding the vast fleets and armies maintained at so immense a charge, this just and necessary war seems hitherto to have been carried on by the same spirit and advice which so long delayed the entering into it; and we conceive that the strictest enquiries into such conduct are the most probable means of redressing our grievances at home, and bringing the war abroad to a speedy and happy conclusion.

Richard Verney, Lord Willoughby de Broke.  
 John Campbell, Duke of Greenwich (Duke of Argyll).  
 Francis Scott, Duke of Buccleuch.  
 William Feilding, Earl of Denbigh.  
 John Carteret, Lord Carteret.  
 Philip Stanhope, Earl Stanhope.  
 Allen Bathurst, Lord Bathurst.  
 John Leveson Gower, Lord Gower.  
 George Montagu, Earl of Halifax.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Fulwar Craven, Lord Craven.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Edward Bligh, Lord Clifton (Earl of Darnley).  
 Heneage Finch, Earl of Aylesford.  
 Scroop Egerton, Duke of Bridgewater.  
 Maurice Thompson, Lord Hawkesbury.  
 Sackville Tufton, Earl of Thanet.  
 Daniel Finch, Earl of Winchilsea and Nottingham.  
 Henry Somerset, Duke of Beaufort.  
 Henry Howard, Earl of Carlisle.  
 George Henry Lee, Earl of Lichfield.  
 William Talbot, Lord Talbot.

## CCCX.

NOVEMBER 18, 1740.

The second clause in the Duke of Argyll's projected address, was, 'as a further proof of our duty and affection to his Majesty's sacred person, royal family, and Government, to assure him, that we will exert ourselves, in our high capacity of hereditary great council to the Crown (to which all other councils are subordinate and accountable) in such a manner as may but tend to the promoting the true interest of his Majesty and our country at this critical conjuncture.' The passage in the parenthesis was intended to assert the superiority of the House of Lords over the Privy Council and the Cabinet, but it was objected in the debate that it might

give offence to the House of Commons, and the supporters of the motion offered to strike it out. The clause, however, was negatived by 62 to 35, and the address of Lord Holderness was carried.

This produced the following protest.

Because when these words made part of the question first moved, they were allowed by every Lord, who spoke in the debate, to be proper and unexceptionable, and the following parenthesis only ('to which all other councils are subordinate and accountable') was objected to, as liable to a misconstruction in another House ; we cannot therefore but be surprised, that when this question, freed from that shadow of an objection, as we conceive, was offered as an amendment to the motion for an Address, it should have been rejected ; and the more so, since the negative passed upon it may be construed to imply, what we are persuaded no Lord in this House can intend (whatever others may wish), a resolution not to inquire, advise, or censure, even though just suspicions, imprudent councils, or criminal measures should require it.

Francis Scott, Duke of Buccleuch.

John Campbell, Duke of Greenwich (Duke of Argyll).

Philip Stanhope, Earl Stanhope.

George Montagu, Earl of Halifax.

John Carteret, Lord Carteret.

William Talbot, Lord Talbot.

Anthony Ashley Cooper, Earl of Shaftesbury.

Scroop Egerton, Duke of Bridgewater.

Edward Bligh, Lord Clifton (Earl of Darnley).

Daniel Finch, Earl of Winchilsea and Nottingham.

Maurice Thompson, Lord Haversham.

Philip Dormer Stanhope, Earl of Chesterfield.

Henry Howard, Earl of Carlisle.

George Henry Lee, Earl of Lichfield.

Sackville Tufton, Earl of Thanet.

Richard Verney, Lord Willoughby de Broke.

William Feilding, Earl of Denbigh.

Heneage Finch, Earl of Aylesford.

Fulwar Craven, Lord Craven.

John Leveson Gower, Lord Gower.

Henry Somerset, Duke of Beaufort.

Allen Bathurst, Lord Bathurst.

### CCCXI.

DECEMBER 1, 1740.

The story of Admiral Vernon's expedition to the West Indies may be found in Stanhope's History, chap. xxi. On the 15th of April, an attempt

had been made at the instance of Lord Bathurst, to censure the Ministry for having failed to send land forces in assistance to the ships under his command, the argument for such a censure being the easy capture of Porto Bello by means of 240 men lent the Admiral by the Governor of Jamaica. This movement was negatived by 62 to 40. On the 24th of November, the Lords appointed a Committee 'to inquire into and consider of the methods of applying for or procuring papers to be laid before the House, which have been used or practised, from the glorious Revolution to this time.' The Committee was nominated from the Opposition as well as from the Ministerial Peers. After the report had been presented by Lord Warwick, a motion was made that copies of the orders and instructions given to Admiral Vernon should be laid before the House, those being omitted which related to any unexecuted design. The subject was debated (Parliamentary History, vol. xi. p. 699) at considerable length, but the motion was negatived by 57 to 35.

The following protest was thereupon inserted in the Journals.

1st, Because we conceive, that the calling for all instructions given to generals and admirals is not only proper and precedented, but is also a necessary step towards the exertion of our privilege, as hereditary counsellors of advising the Crown, which privilege can be properly exercised only in matters depending. And, if from pretended apprehensions of unseasonable discoveries, instructions are to be kept secret from this House, till after they have had their effect, the weakness or guilt of the measures of an administration will appear probably too late to punish the offenders, but certainly too late to prevent the mischief.

2ndly, Because we do not find any negative put upon motions for instructions before the year 1721; from which time, indeed, instructions began to be of such a nature, that we do not wonder their authors desired to conceal them. The instructions by which our fleet lay in shameful inaction before Gibraltar, when besieged, and suffered the enemy's ships to bring ammunition and provisions to their army, and those by which three admirals, about thirty captains, above one hundred lieutenants, and four thousand private seamen, perished most ingloriously at the Bastimentos, create, as we conceive, a just suspicion of all subsequent instructions flowing from the same source, and, in our opinion, evince the necessity of the strictest inquiry, and most ample informations in this important conjuncture.

3rdly, Because the motion under the limitations which accompanied it, was not even liable, as we apprehend, to the modern objection of making improper discoveries of future designs; and it

is impossible to conceive, that when Admiral Vernon sailed from hence with so small a force as five ships only, and before the long-wished-for declaration of war, that his instructions could contain anything more than orders for reprisals. Since, considering his insufficient force, any orders to attempt even what he so happily and unexpectedly executed, would have been contrary to the genius, and inconsistent with the too-long-experienced pacific disposition of the Administration.

4thly, Because, that as the West Indies were allowed by all Lords in the debate to be the proper scene of action, we think it our duty more particularly to attend to the conduct of the Administration in those parts; especially since, from the time of the declaration of war, till very lately, that important scene of action seems to have been neglected or forgot; while, as we apprehend, the slightest alarms have been fondly credited as reasons for keeping our numerous forces at home, to the oppression of the people; whereas a small proportion of them, timely employed in the West Indies, against a then unprepared and unprovided enemy, might probably have enabled Vice-Admiral Vernon to have brought this just and necessary war to a speedy and happy conclusion.

5thly, Because we apprehend that the denial of these necessary lights in the first step of the inquiry, not only casts a damp upon the inquiry itself, but must also lessen the weight of any resolutions that may be taken in the course of it. The nation that so unanimously expects and calls for an inquiry into a conduct, which at best seems to them unaccountable, if not blameable, will be confirmed in whatever suspicions they might entertain, when the lights necessary to remove those suspicions are denied. And should we come to any vote of approbation, such a vote may perhaps be misconstrued to be an influenced complaisance to the Administration, the dictated result of a pretended inquiry founded only upon imperfect facts, and partial representations.

Allen Bathurst, Lord Bathurst.

John Hervey, Earl of Bristol.

Philip Dormer Stanhope, Earl of Chesterfield.

John Campbell, Duke of Greenwich (Duke of Argyll).

Henry Howard, Earl of Carlisle.

John Fane, Earl of Westmorland.

Scroop Egerton, Duke of Bridgewater.

Anthony Ashley Cooper, Earl of Shaftesbury.

Francis Willoughby, Lord Middleton.  
 Richard Temple, Viscount Cobham.  
 Maurice Thompson, Lord Haversham.  
 William Talbot, Lord Talbot.  
 Heneage Finch, Earl of Aylesford.  
 George Henry Lee, Earl of Lichfield.  
 Sackville Tufton, Earl of Thanet.  
 George Montagu, Earl of Halifax.  
 William Feilding, Earl of Denbigh.  
 John Leveson Gower, Lord Gower.  
 Richard Verney, Lord Willoughby de Broke.

## CCCXII.

DECEMBER 1, 1740.

The Opposition next moved through Lord Bathurst for copies of all letters which had been sent by Admiral Vernon to the Admiralty, and the Secretaries of State, between the time of his sailing and the 24th of June, 1740, with copies of all the letters sent by the same to the Admiral. The ministerial party met this motion by limiting the return to such letters as refer to any 'supplies of ships, men, stores, ammunition, provisions, or other necessaries,' and carried this without a division. It was supposed that the opposition was instigated by Vernon himself. See Tindal.

The following protest was inserted.

Because we conceive those restrictive words will prevent the House from receiving that information which we think absolutely necessary. For if Vice-Admiral Vernon, in any of his letters, has given it as his opinion (as it is generally believed he has) that with a moderate number of land forces he could have made such important conquests in America, as would have brought our enemies before this time to sue for peace, this House had, as we apprehend, a right to see such letters, without which, we conceive, this inquiry can only tend to detect the negligence or corruption of inferior officers, and the capital errors of the ministers themselves may remain concealed.

John Hervey, Earl of Bristol.  
 John Campbell, Duke of Greenwich (Duke of Argyll).  
 John Fane, Earl of Westmorland.  
 Allen Bathurst, Lord Bathurst.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Richard Temple, Viscount Cobham.  
 Maurice Thompson, Lord Haversham.

Henry Howard, Earl of Carlisle.  
Scoop Egerton, Duke of Bridgwater.  
William Talbot, Lord Talbot.  
George Henry Lee, Earl of Lichfield.  
Francis Willoughby, Lord Middleton.  
George Montagu, Earl of Halifax.  
Heneage Finch, Earl of Aylesford.  
John Leveson Gower, Lord Gower.  
Sackville Tufton, Earl of Thanet.  
William Feilding, Earl of Denbigh.  
Richard Verney, Lord Willoughby de Broke.

## CCCXIII.

DECEMBER 8, 1740.

Besides Admiral Vernon, who had been sent to the West Indies, and Anson, who had been commissioned to the Pacific, Rear-Admiral Haddock, a naval officer of considerable reputation, had been sent to the Mediterranean. Haddock had taken up his quarters in Port Mahon, and the Opposition suspected that his comparative inactivity was due to instructions which he had received from the Government. They therefore moved for these instructions, and a long debate (Parliamentary History, vol. xi, p. 768) ensued. The motion was rejected by 58 to 41. The purpose of these motions was to obtain information on which to ground the attack on Walpole, which was meditated in both Houses, but most persistently in the Lords, the Lower House being near upon a dissolution.

The following protest was inserted.

1st, Because we conceive that there never were instructions more necessary to be examined, than those contained in this question, in order to enable us to discharge our duty both as counsellors to his Majesty, and guardians of the nation. The known and astonishing inaction, for the space of above two years, of a great and powerful fleet, fitted out and maintained at an immense expense to the nation, fixes a heavy charge either upon the commander of that squadron, or upon those who gave him his instructions. But when we compare the experienced courage and abilities of Rear-Admiral Haddock, upon all former occasions, with the inglorious instructions given by this Administration to the several admirals employed for these last twenty years, we cannot, as at present informed, but impute this unaccountable inaction to the weakness or pusillanimity of those, whose instructions, we are persuaded, he with concern obeyed. And we are confirmed in this

opinion, by his being still continued in that command, which a disobedience to his instructions would have forfeited.

2ndly, Because we think it necessary, that the House should be fully informed, by what fatal mistake, negligence, or design, the Spanish squadron at Cadiz, so long blocked up in that port, while they were neither ready, nor the season of the year fit for them to go out, should have been, by the sudden withdrawing of our fleet into the Mediterranean, permitted to sail without molestation, as soon as they were fit, and the season favourable. And we cannot, as at present informed, impute that unhappy measure to Sir Chaloner Ogle, since orders of that great importance ought to be conceived in the clearest, plainest, and least ambiguous terms ; which, had he mistaken, he would not have been, as he now is, entrusted with the command of so great a fleet, and with the interpretation of instructions of still greater consequence. Nor can we conceive, that the communication of orders relating only to sailing, and the change of station, can sufficiently clear up a point of that great importance.

3rdly, Because we think, that the stale objection, that the communication of these instructions may discover to our enemies intended designs and attempts, can have no weight upon this occasion, when the reason for calling for those instructions, is, because no one attempt of any kind whatsoever has been made upon our enemies in the course of above two years ; and it is not credible, that if, during that time, any one design had been intended, no one attempt should have been made in consequence of it. We therefore justly may, and only can conceive these instructions, which we are not allowed to apply for, to be of the same inactive nature of those which we have formerly seen flowing from the same languid source, to the equal dishonour of his Majesty's councils and arms.

4thly, Because we conceive, that the denial of these necessary lights, puts a full stop to any farther effectual inquiry into the conduct of the war ; an inquiry so becoming this House, and so unanimously called for by the voice of the nation. The outward appearances have at once raised the curiosity, the astonishment, and the concern of a brave and a loyal people, willing to sacrifice their lives and fortunes for the honour and advantage of his Majesty and this Kingdom, in the prosecution of this just and necessary war. And we conceive that they ought, by the strictest inquiry, upon the fullest infor-

mations, to have been satisfied as to the past, and secured as to the future. And we think, that all minute inquiries into the little abuses of inferior officers, over whom it is the duty of the Administration to watch, would be only amusing and deceiving mankind with the name of an inquiry, and descending from our dignity of counsellors of the Crown, and checks of the Administration, to the low rank of inquisitors into the conduct of petty and unprotected offenders. We therefore think, that we have discharged our duty to his Majesty and the public, in having moved for those papers, which we considered as the foundations absolutely necessary for a proper and effectual inquiry. We here enter our dissent upon the denial of those papers ; the world must then judge of the conduct of the war, upon the appearance of facts and circumstances ; with this considerable, additional circumstance : that lights were denied.

Richard Verney, Lord Willoughby de Broke.  
George Montagu, Earl of Halifax.  
William Talbot, Lord Talbot.  
Philip Dormer Stanhope, Earl of Chesterfield.  
Herbert Windsor, Lord Montjoy (Viscount Windsor).  
Henry Howard, Earl of Carlisle.  
Henry Howard, Earl of Suffolk.  
George Henry Lee, Earl of Lichfield.  
Henry Bowes Howard, Earl of Berkshire.  
Allen Bathurst, Lord Bathurst.  
John Ward, Lord Ward.  
Hugh Boscawen, Viscount Falmouth.  
Richard Reynolds, Bishop of Lincoln.  
Heneage Finch, Earl of Aylesford.  
Scroop Egerton, Duke of Bridgewater.  
John Leveson Gower, Lord Gower.  
Maurice Thompson, Lord Haversham.  
Francis Willoughby, Lord Middleton.  
James Compton, Earl of Northampton.  
Montague Bertie, Earl of Abingdon.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Edward Harley, Earl of Oxford and Mortimer.  
Price Devereux, Viscount Hereford.  
Sackville Tufton, Earl of Thanet.  
John Hervey, Earl of Bristol.  
Richard Temple, Viscount Cobham.  
John Fane, Earl of Westmorland.  
John Campbell, Duke of Greenwich (Duke of Argyll).  
William Feilding, Earl of Denbigh.

## CCCXIV.

DECEMBER 9, 1740.

A debate was taken in the Lords on the state of the army, and the Duke of Argyll moved 'that augmenting the army by raising regiments, as it is the most unnecessary and expensive mode of augmentation, is also the most dangerous to the liberties of Britain.' The debate is to be found in Parliamentary History, vol. xi, p. 894. The motion was rejected by 59 to 42. The debate in the House of Commons was taken the next day. The increase proposed was seven new regiments of foot (5,705 men) and four new regiments of marine (4,620 men). The vote was taken by 166 to 232.

The following protest was inserted.

1st, Because we conceive, that this motion ought not to have been laid aside by the previous question, the arguments urged in the debate against our coming to this resolution at this time, being, in our opinion, highly insufficient; since we cannot apprehend what further lights could be had with relation to the several propositions contained in the question, than those we received in the debate, authorised by the usage of almost all the nations in Europe; nor were there any particular papers pointed out, as necessary for the information of the House; and we thought this the properest time to come to this resolution, before any steps were taken as to the method of making the intended augmentation.

2ndly, Because it was proved in the debate, and universally admitted, that the augmentation of our land forces, by the raising of new corps, was by near one-third a more expensive manner of augmenting, than by additional men to companies. A consideration which, in our opinion, ought to have the greatest weight, at this time, when the nation is engaged in a new war, and still groaning under all the burthen of the last, though after thirty years' peace.

3rdly, Because, considering that the economy of augmenting the forces by additional men in companies was admitted, that the utility of it was not disproved, we cannot help suspecting, that the raising new corps at this time, when the election of a new Parliament draws so near, may be of a dangerous tendency to the constitution of this Kingdom, and relate more to civil than military service, especially since there are now no officers to be found (the officers now remaining upon half-pay having been already judged

by the Administration unfit for service) it is, in our opinion, opening a door to introduce a large body of commissioned pensioners. These suspicions are strengthened by the experience we have had, that no rank has been either above, or below ministerial resentment, and the severity of Parliamentary discipline. And we must with concern observe, that the honour of the nation, and the fate of this important war, has been entrusted to raw and newly-levied troops, in order, as we apprehend, to keep the others at home, only for civil purposes.

George Montague, Earl of Halifax.  
 John Fane, Earl of Westmorland.  
 Maurice Thompson, Lord Haversham.  
 James Compton, Earl of Northampton.  
 Henry Howard, Earl of Suffolk.  
 Anthony Ashley Cooper, Earl of Shaftesbury.  
 Richard Temple, Viscount Cobham.  
 Edward Harley, Earl of Oxford and Mortimer.  
 Henry Bowes Howard, Earl of Berkshire.  
 John Campbell, Duke of Greenwich (Duke of Argyll).  
 Montague Bertie, Earl of Abingdon.  
 Allen Bathurst, Lord Bathurst.  
 Francis Willoughby, Lord Middleton.  
 John Hervey, Earl of Bristol.  
 Heneage Finch, Earl of Aylesford.  
 George Henry Lee, Earl of Lichfield.  
 John Leveson Gower, Lord Gower.  
 Philip Dormer Stanhope, Earl of Chesterfield.  
 Sackville Tufton, Earl of Thanet.  
 William Talbot, Lord Talbot.  
 Scroop Egerton, Duke of Bridgwater.  
 Price Devereux, Viscount Hereford.  
 Henry Howard, Earl of Carlisle.  
 Richard Verney, Lord Willoughby de Broke.

## CCCXV.

JANUARY 28, 1741.

At the instance of Lord Bathurst, the House was asked to present an address to the King, asking for the correspondence of Admiral Vernon 'in relation to the want of more ships, and more men, or any intimations of services which he could have performed, if he had been supplied with a few more ships and some land forces.' The debate is lost, but the heads of it are given in Secker's MSS. (Secker was then Bishop of Oxford). The motion was rejected by 71 to 44.

The following protest was inserted.

Because we conceive that the House entered into this enquiry, with a view to form a proper judgment on the conduct of the war; and some extracts of letters have been laid before us, but such, as we apprehend, do not even answer the demand of the House, much less the end of the enquiry; yet it appears plainly, from those few extracts, that Admiral Vernon had made frequent and grievous complaints of the insufficiency of the stores, and has represented them as fit only for a Spithead expedition. We have therefore the strongest grounds to be persuaded, that in some of his letters, he has made demands of more ships, and more men, though nothing relating to those articles has been laid before us hitherto. Had he been sent out with a greater force at first, or had fresh succours of ships and men, with proper stores, been sent after him in due time, we are firmly of opinion, that he would have gained such further advantages as might long before now have proved decisive.

By the dilatory proceeding of the Administration, as it appears to us, the scene is much changed. The Spanish fleet has been suffered to sail out of their ports, to carry supplies of all kinds to their garrisons; opportunity has been given them to repair their fortifications in America; and, which is still of more consequence, as we fear, to procure the assistance of another power, who was not ready, if willing, at that time, to give us any disturbance in those parts.

John Campbell, Duke of Greenwich (Duke of Argyll).  
Henry Howard, Earl of Suffolk.  
Henry Bowes Howard, Earl of Berkshire.  
John Fane, Earl of Westmorland.  
Brownlow Cecil, Earl of Exeter.  
John Leveson Gower, Lord Gower.  
Allen Bathurst, Lord Bathurst.  
Maurice Thompson, Lord Haversham.  
Anthony Ashley Cooper, Earl of Shaftesbury.  
George Henry Lee, Earl of Lichfield.  
Thomas Mansel, Lord Mansel.  
Heneage Finch, Earl of Aylesford.  
Scroop Egerton, Duke of Bridgewater.  
Francis Scott, Duke of Buccleuch.  
Thomas Foley, Lord Foley.  
Richard Temple, Viscount Cobham.  
Robert Ker, Earl of Ker (Duke of Roxburgh).  
Henry Howard, Earl of Carlisle.  
Henry Somerset, Duke of Beaufort.  
Francis Willoughby, Lord Middleton.

Price Devereux, Viscount Hereford.  
Herbert Windsor, Lord Montjoy (Viscount Windsor).  
William Feilding, Earl of Denbigh.  
Charles Bruce, Lord Bruce of Whorlton.  
Montague Bertie, Earl of Abingdon.  
Sackville Tufton, Earl of Thanet.

## CCCXVI.

JANUARY 28, 1741.

The Opposition now attempted, at the instance of Lord Gower, to appoint a secret committee to enquire into the conduct of the war, consisting of all the Privy Counsellors in the House. The proposal was rejected by 68 to 43, and the following protest was inserted.

1st, Because the necessity of secrecy, and the danger of communicating matters of importance, to so numerous an assembly as this House, having been constantly urged as the only arguments for refusing the lights absolutely necessary for carrying on, with any hopes of success, our enquiry into the unaccountable conduct of the war, we thought the proposing of this committee would fully have obviated those objections by confining the knowledge of those secrets, (if any such there are) amongst those who by the constitution are supposed and appointed to be informed of them and the negative put upon this motion, gives us but too just reason to suspect, that the most material transactions, with relation to this war, have even been concealed from those, who, by their situations, ought, in the very first instance, to have been consulted.

2ndly, Because the so often urged argument of secrecy proves too much, and may as often without, as with reason, be used in bar of all enquiries, that any administration, conscious either of their guilt, or their ignorance, may desire to defeat. It may not only prove the security, but the cause of a sole minister, secrecy being undoubtedly best observed by one; and such a sole Minister may, by the same reasoning, as well refuse the communication of measures to the rest of his Majesty's council, and thereby engross a power inconsistent with, and fatal to, this constitution; and we cannot help observing, that such a timorous and a scrupulous secrecy, is much oftener the refuge of guilt, than the resort of innocence.

John Campbell, Duke of Greenwich (Duke of Argyll).  
Francis Willoughby, Lord Middleton.  
Thomas Mansel, Lord Mansel.  
Allen Bathurst, Lord Bathurst.  
Scoop Egerton, Duke of Bridgewater.  
Henry Bowes Howard, Earl of Berkshires.  
Thomas Foley, Lord Foley.  
Henry Howard, Earl of Carlisle.  
Herbert Windsor, Lord Montjoy (Viscount Windsor).  
Anthony Ashley Cooper, Earl of Shaftesbury.  
Charles Bruce, Lord Bruce of Whorlton.  
Heneage Finch, Earl of Aylesford.  
Maurice Thompson, Lord Haversham.  
John Leveson Gower, Lord Gower.  
Francis Scott, Duke of Buccleuch.  
Henry Somerset, Duke of Beaufort.  
Henry Howard, Earl of Suffolk.  
Price Devereux, Viscount Hereford.  
John Fane, Earl of Westmorland.  
Brownlow Cecil, Earl of Exeter.  
Richard Temple, Viscount Cobham.  
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